CLERK'S COPY.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1942

No. 449

MARICOPA COUNTY, ARIZONA, W. H. LINVILLE, AS COUNTY TREASURER, AND EX-OFFICIO TAX COLLECTOR OF MARICOPA COUNTY, ET AL., PETITIONERS,

vs.

THE VALLEY NATIONAL BANK OF PHOENIX

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR CERTIORARI FILED OCTOBER 8, 1942.

CERTIORARI GRANTED NOVEMBER 16, 1942.

TRANSCRIPT OF RECORD

Supreme Court of the United States

October Term, 1942

No.....

MARICOPA COUNTY, Arizona, W. H. LINVILLE, as County Treasurer and Ex-Officio Tax Collector of Maricopa County, Arizona; J. D. BRUSH, as County Assessor of Maricopa County, Arizona; CHARLES H. FIELDS, JOHN A. FOOTE and GEORGE FRYE, as Members of and constituting the Board of Supervisors and County Board of Equalization of Maricopa County, Arizona; PIMA COUNTY, Arizona, WALLACE S. BRANSFORD, as County Treasurer and Ex-Officio Tax Collector of Pima County, Arizona, CHARLES M. TAYLOR, as County Assessor of Pima County, Arizona, THOMAS COLLINS, R. H. MARTIN, and J. B. MEAD, as Members of and Constituting the Board of Supervisors and County Board of Equalization of Pima County, Arizona,

Petitioners,

vs.

THE VALLEY NATIONAL BANK OF PHOENIX, a corporation,

Respondent.

UPON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 10025

United States

Circuit Court of Appeals

For the Ninth Circuit.

MARICOPA COUNTY, Arizona, W. H. LINVILLE, as County Treasurer and Ex-Officio Tax Collector of Maricopa County, Arizona; J. D. BRUSH, as County Assessor of Maricopa County, Arizona; CHARLES H. FIELDS, JOHN A. FOOTE and GEORGE FRYE, as Members of and constituting the Board of Supervisors and County Board of Equalization of Maricopa County, Arizona; PIMA COUNTY, Arizona, WALLACE S. BRANSFORD, as County Treasurer and Ex-Officio Tax Collector of Pima County, Arizona, CHARLES M. TAYLOR, as County Assessor of Pima County, Arizona, THOMAS COLLINS, R. H. MARTIN, and J. B. MEAD, as Members of and Constituting the Board of Supervisors and County Board of Equalization of Pima County, Arizona,

Appellants,

vs.

THE VALLEY NATIONAL BANK OF PHOENIX, a corporation,

Appellee.

Transcript of Record

Upon Appeals from the District Court of the United States for the District of Arizona.

PARKER PRINTING COMPANY, 543 SANSOME STREET, SAN FRANCISCO

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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*Page numbering appearing at foot of page of original certified Transcript of Record.

In the United States District Court
for the District of Arizona

October 1935 Term At Phoenix

MINUTE ENTRY OF
WEDNESDAY, OCTOBER 23, 1935
(Phoenix Division)

Honorable F. C. Jacobs,
United States District Judge, presiding

E-333

THE VALLEY NATIONAL BANK OF PHOENIX,

Plaintiff,

vs.

MARICOPA COUNTY, ARIZONA; HARRY M. MOORE, as County Treasurer and Ex-Officio Tax Collector of Maricopa County, Arizona; J. D. BRUSH, as County Assessor of Maricopa County, Arizona; C. W. PETERSON, JOHN A. FOOTE and GEO. FRYE, as Members of and Constituting the Board of Supervisors and County Board of Equalization of Maricopa County, Arizona; PIMA COUNTY, ARIZONA; DANIEL E. GARVEY, as County Treasurer and Ex-Officio Tax Collector of Pima County, Arizona; CHARLES M. TAYLOR, as County Assessor of Pima County, Arizona; WARREN A. GROSSETTA, R. H. MARTIN, and J. B. MEAD, as Members of and Constituting the Board of Supervisors and County Board

of Equalization of Pima County, Arizona; GRAHAM COUNTY, ARIZONA; CHARLES M. GEITZ, as County Treasurer and Ex-Officio Tax Collector of Graham County, Arizona; ALVIN GOODMAN, as County Assessor of Graham County, Arizona; J. W. GREENHALGH, GLEN HOOPES, and VIRGIL McEUEN, as Members of and Constituting the Board of Supervisors and County Board of Equalization of Graham County, Arizona; MOHAVE COUNTY; C. B. TATUM, as County Treasurer and Ex-Officio Tax Collector of Mohave County, Arizona; W. O. RUGGLES, as County Assessor of Mohave County, Arizona; F. L. HUNT, W. D. LAWE, and E. T. LYONS, as Members of and constituting the Board of Supervisors and County Board of Equalization of Mohave County, Arizona; FRANK LUKE, THAD MOORE, and D. C. O'NEIL, as Members of and Constituting the State Tax Commission and the State Board of Equalization of the State of Arizona,

Defendants. [5]

ORDER SETTING PLAINTIFF'S APPLICATION FOR INTERLOCUTORY INJUNCTION FOR HEARING, AND DIRECTING NOTICE.

The Valley National Bank, of Phoenix, a corporation, the plaintiff in the above entitled cause, having

filed herein its Motion for the issuance of an interlocutory injunction, as prayed for in the verified bill of complaint filed herein,

It Is Hereby Ordered, that said application for interloctuory injunction be and the same hereby is set for hearing at the court room of the United States District Court, for the District of Arizona, at Phoenix, on the 4th day of November, 1935, at the hour of 10:00 o'clock A. M., and that notice of said hearing and the time and place thereof be given to the defendants not less than five (5) days before said hearing, by serving upon each of said defendants a copy of said motion, together with copies of said verified bill of complaint, and a copy of this order.

Dated this 23rd day of October, 1935.

F. C. JACOBS,
Judge of the United States
District Court.

[6]

[Title of District Court and Cause—E-333]

MINUTE ENTRY OF MONDAY, NOVEMBER 4, 1935

This cause comes on regularly before the Court this day pursuant to Order to Show Cause why Application for Interlocutory Injunction should not be granted.

Messrs. Kibbey, Bennett, Gust, Smith & Rosenfeld, by John L. Gust, Esquire, appear as counsel for Plaintiff. No appearance is made on behalf of Defendants.

Upon motion of said counsel for Plaintiff, made at the request of counsel for Defendants,

It Is Ordered that this cause be continued and reset for hearing Monday, November 18, 1935, at the hour of ten o'clock A. M. [7]

[Title of District Court and Cause—E-333]

ORDER SUSTAINING MOTIONS TO DISMISS AND JUDGMENT

On October 23, 1935, plaintiff filed its bill of complaint herein; on November 4, 1935, Maricopa County, Arizona, and others; Pima County, Arizona, and others; Graham County, Arizona, and others; Mohave County, Arizona, and others; and Frank Luke, Thad M. Moore and D. C. O'Neil as members of and constituting the State Tax Commission and the State Board of Equalization of the State of Arizona, filed their separate motions to dismiss said bill of complaint; each and all of said motions came duly and regularly on for hearing before the court at Phoenix, Arizona, on March ....., 1936, and after argument by counsel the same were submitted and they and each and all of them were by the court taken under advisement; and, after due con-

sideration and it appearing to be proper, it is ordered adjudged and decreed, and this does order, adjudge and decree:

1. That said motions of Maricopa County, Arizona, an others; Pima County, Arizona, and others; Graham County, Arizona, and others; Mohave County, Arizona, and others; and Frank Luke, Thad M. Moore and D. C. O'Neil as members of and constituting the State Tax Commission and the State Board of Equalization of the State of Arizona, to dismiss the bill of complaint herein be, and the same are hereby granted;

2. That the bill of complaint herein be and the same is dismissed;

3. That the plaintiff herein take nothing by its action and that the said moving defendants, and each and all of them, do have and recover of and from said plaintiff their costs and disbursements herein necessarily expended and hereby taxed in the sum of $.....

Done in open court March 16, 1936.

JAMES H. BALDWIN
United States District Judge
District of Montana, specially assigned. [8]

[Title of District Court and Cause—E-333]

MINUTE ENTRY OF FRIDAY, JUNE 19, 1936

Plaintiff's Motion and Amended Motion for Modification of Order of Dismissal, having heretofore been argued, submitted and by the Court taken under advisement, and the Court having duly considered the same, and being fully advised in the premises,

It Is Ordered that said Motion to Modify Order of Dismissal be granted; that Plaintiff be granted leave to file Amended and Supplemental Complaint, and that an exception be entered on behalf of Defendants. [9]

[Title of District Court and Cause—E-350]

MINUTE ENTRY OF SATURDAY, OCTOBER 31, 1936

The Valley National Bank of Phoenix, a corporation, the plaintiff in the above entitled cause having filed herein its motion for the issuance of an interlocutory injunction as prayed for in the verified bill of complaint herein,

It Is Hereby Ordered, that said application for interlocutory injunction be and the same hereby is set for hearing at the court room of the United States District Court for the District of Arizona, at Phoenix, on the 16th day of November, 1936, at the hour of 10 o'clock A. M., at which time and place

the defendants and each of them are directed to appear and show cause why said interlocutory injunction should not be issued as prayed for.

It Is Further Ordered that notice of said hearing and the time and place thereof be given to the defendants not less than five (5) days before said hearing by serving upon each of said defendants a copy of the verified bill of complaint and a copy of this Order.

Dated this 31st day of October, 1936.

DAVE W. LING
Judge of the United States
District Court [10]

[Title of District Court and Cause—E-350]

MINUTE ENTRY OF MONDAY,
DECEMBER 7, 1936

This case comes on regularly for hearing this day pursuant to Order to Show Cause why Interlocutory Injunction should not be issued.

John L. Gust, Esquire, appears as counsel for the Plaintiff. No counsel appears for the Defendants.

Whereupon, on motion of counsel for the Plaintiff,

It Is Ordered that this case be passed to December 14, 1936. [11]

[Title of District Court and Cause—E-333]

MINUTE ENTRY OF TUESDAY, DECEMBER 8, 1936

ORDER

It appearing from the written stipulation of the plaintiff and the defendants, Maricopa County, Harry M. Moore, as County Treasurer and Ex-Officio Tax Collector of Maricopa County, Arizona, J. D. Brush, as County Assessor of Maricopa County, Arizona, and C. W. Peterson, John A. Foote and George Frye, as members of and constituting the Board of Supervisors and County Board of Equalization of Maricopa County, Arizona, that the plaintiff admits that there is justly due and owing from the plaintiff and its shareholders, to the defendant, Maricopa County, as taxes for the year 1935, the sum of Seventeen Thousand Nine Hundred Thirty-eight and 09/100 ($17,938.09) Dollars, and that the defendants who are parties to the above mentioned stipulation contend that the sum of Forty-nine Thousand Eight Hundred Ten and 86/100 ($49,810.86) Dollars is due and owing from the plaintiff to said Maricopa County as taxes for the year 1935, and that the parties above named are desirous of making and receiving payment of the amount admitted to be due, without prejudicing the rights of any of the parties to the suit with respect to the balance,

Wherefore, Pursuant to Said Stipulation, It Is Hereby Ordered, Adjudged and Decreed that the said plaintiff may deposit with the Clerk of this

Court the said sum of Seventeen Thousand Nine Hundred Thirty-eight and 09/100 ($17,938.09) Dollars, and that said Clerk may pay over said sum to the said Harry M. Moore, as County Treasurer of said Maricopa County, subject to the terms hereinafter set forth, or that said plaintiff may pay said sum direct to said defendant county treasurer to be received by him subject to the conditions hereinafter set forth. That when paid to said defendant county treasurer by said Clerk, or by said plaintiff as and for taxes for the year 1935, upon plaintiff's shares of stock, the receipt and acceptance thereof by said defendant shall be without prejudice on the part [12] of said defendant, or any other defendant to said suit, or to the State of Arizona, the County of Maricopa, or any city, town or school district interested in said taxes, to claim the balance of the amount of taxes heretofore levied and assessed against plaintiff's shares of stock for said year for said purposes, as shown by the tax rolls in said defendant county treasurer's office, and such payment by said plaintiff and such acceptance and receipt by said defendant county treasurer shall be without prejudice on the part of said plaintiff to resist and contest the collection of any further or additional taxes for said year for said purposes, upon plaintiff's shares of stock, upon the grounds and for the reasons set forth in plaintiff's supplemental bill of complaint on file herein, or any other legal ground, and such payment and acceptance shall be without prejudice to the contentions of either the plaintiff

as to the invalidity, or the defendants as to the validity of the amount of taxes for said year, and said purposes in excess of the amount so paid and received, and shall not prejudice the right of said defendants in the event the court shall determine that the original assessment made on said property and contested in this action was or is illegal, to legally reassess said property for said year and in such event the payments hereunder shall be credited upon the amount of taxes which would be assessed and become due under such reassessment, and the tax collector of Maricopa County shall have the right and power to allow such credit and collect only the difference, if any, between the amount paid hereunder and the amount which shall become due under such reassessment.

Dated this 8th day of December, 1936.

DAVE W. LING,
Judge

Approved Dec. 8, 1936.
HARRY JOHNSON
E. G. FRAZIER
JOHN L. SULLIVAN
DUDLEY W. WINDES
Attys. for Defts. [13]

[Title of District Court and Cause—E-350]

MINUTE ENTRY OF TUESDAY, DECEMBER 8, 1936

ORDER

It appearing from the written stipulation of the parties to the above entitled suit on file herein that the plaintiff admits there is justly due and owing from the plaintiff and its shareholders to the respective County Treasurers who are parties defendant to said suit, as taxes for the year 1936, the following sums:

Maricopa County	$14,983.29
Pima County	4,900.84
Graham County	673.71
Yavapai County	677.32
Gila County	4,296.68

And that the parties to said cause are desirous of making and receiving payment of the amount admitted to be due without prejudicing the rights of any of said parties with respect to the balance;

Now, Therefore, pursuant to said stipulation,

It Is Hereby Ordered, Adjudged and Decreed that the said plaintiff may deposit with the Clerk of this court the aforesaid sums and that said Clerk may pay over said sums to the respective County Treasurers who are parties defendant to this suit, subject to the terms hereinafter set forth, or that said plaintiff may pay said sum direct to said County Treasurers and each of them to be received by each of

said County Treasurers subject to the conditions hereinafter set forth; that, when paid to said defendant County Treasurers by said Clerk or by said plaintiff, as and for taxes for the year 1936 upon plaintiff's shares of stock, the receipt or acceptance thereof by said defendants or any of them shall be without prejudice on the part of said defendant or any other defendant to said suit or to the State of Arizona or any of the counties of said state that are defendants to this suit, or any city, town or school district interested in said taxes, to claim the balance or the amount of taxes heretofore levied and assessed [14] upon plaintiff's shares of stock for said year for said purposes as shown by said tax rolls in said defendant County Treasurers Office, and such payment by said plaintiff and such acceptance and receipt by said defendant County Treasurers or any of them shall be without prejudice on the part of said plaintiff to resist and contest the collection of any further or additional taxes for said year for said purpose upon plaintiff's said property upon the grounds and for the reasons set forth in plaintiff's bill of complaint on file herein, or any other legal ground; and such payment and acceptance shall be without prejudice to the contentions of either the plaintiff as to the invalidity or the defendants as to the validity of the amount of taxes for said year and said purposes in excess of the amount so paid and received, and shall not prejudice the right of said defendants or any of them, in the event the court shall determine that the original

assessment made on said property and contested in this action was or is illegal, to legally re-assess said property for said year and in such event the payments herein shall be credited upon the amount of taxes which would be assessed and become due under such re-assessment, and the Tax Collectors of the respective counties shall have the right and power to allow such credit and collect only the difference, if any, between the amount paid herein and the amount which shall become due under such reassessment.

And it further appearing from said written stipulation of the parties, on file herein, that it is agreed by and between said parties that plaintiff shall withdraw its application for interlocutory injunction upon the conditions hereinafter set forth;

It Is Hereby Further Ordered, Adjudged and Decreed that the withdrawal of said application for interlocutory injunction by the plaintiff is hereby approved subject to the condition that the plaintiff shall have the right to renew said application at any time during the pendency of said suit, or any appeal from the judgment therein, in the event any of the defendants shall take any steps to enforce the collection of the balance of the taxes which remain unpaid prior to the time that a final judgment [15] is entered in said cause and the time to appeal therefrom has expired or the same has been affirmed by the court of last resort, and that the defendants and each of them are granted up to and including the 14th day of December, 1936, to file motion to

dismiss or answer to the bill of complaint and that upon the filing of said motion to dismiss or answer, the cause shall proceed in regular course as in said stipulation provided.

Dated this 8th day of December, 1936.

DAVE W. LING
Judge

Approved Dec. 8, 1936
HARRY JOHNSON
E. G. FRAZIER
JOHN L. SULLIVAN
DUDLEY W. WINDES
Atys. for county & tax commission et al.

[16]

[Title of District Court and Cause—E-350]

MINUTE ENTRY OF MONDAY,
DECEMBER 14, 1936

John L. Gust, Esquire, and Charles L. Rawlins, Esquire, appear as counsel for the Plaintiff. Dudley Windes, Esquire, and E. G. Frazier, Esquire, appear as counsel for the Defendants and now file Defendants' Motions to Dismiss herein, and

It Is Ordered that said Motions to Dismiss be set for hearing at this time.

Argument is now had by respective counsel, and

It Is Ordered that said Motions to Dismiss be submitted and by the Court taken under advisement.

[17]

[Title of District Court and Cause—E-333]

MINUTE ENTRY OF
FRIDAY, FEBRUARY 19, 1937

Defendants' Motions to Dismiss Amended and Supplemental Bill of Complaint having been argued, submitted and by the Court taken under advisement, and the Court having duly considered the same, and being fully advised in the premises,

It Is Ordered that said Motions to Dismiss Amended and Supplemental Bill of Complaint be, and the same are denied, and that an exception be entered on behalf of the defendants. [18]

[Title of District Court and Cause—E-350]

MINUTE ENTRY OF
FRIDAY, FEBRUARY 19, 1937

Defendants' Motions to Dismiss Bill of Complaint having been argued, submitted and by the Court taken under advisement, and the Court having duly considered the same, and being fully advised in the premises,

It Is Ordered that said Motions to Dismiss Bill of Complaint be, and the same are denied, and that an exception be entered on behalf of the defendants. [19]

[Title of District Court and Cause—E-333]

ORDER GRANTING LEAVE TO FILE AMENDED AND SUPPLEMENTAL COMPLAINT

Application having been made to this court for leave to file an amended and supplemental complaint, accompanied by a copy of said proposed amended pleading, leave is hereby granted to plaintiff to file said amended and supplemental complaint and the same is hereby directed to be filed with the clerk forthwith;

And, it appearing that certain of the county officials who are named as parties defendant to the original complaint have ceased to hold office and that by the amended and supplemental complaint their successors are made parties defendant, it is ordered that said successor defendants be allowed fifteen (15) days from the date of notice of their said substitution as parties defendant to object thereto.

Dated this 24 day of April, 1939.

DAVE W. LING
Judge. [20]

[Title of District Court and Cause—E-333.]

SECOND AMENDED AND SUPPLEMENTAL BILL OF COMPLAINT:

(For Injunction Against Collection of Taxes) [21]

Comes now the above named plaintiff, and for its

Second Amended and Supplemental Bill of Complaint against the above named defendants, alleges:

I.

That plaintiff is, and was at all times herein mentioned, a corporation, duly incorporated as a national banking association, under the laws of the United States of America, and authorized to do a banking business in the State of Arizona, having its principal banking house at Phoenix, Maricopa County, Arizona, and branches in other cities and towns in the County of Maricopa, and in cities and towns in the counties of Pima, Graham, Mohave, Gila, Greenlee, Pinal and Yavapai.

That plaintiff brings this suit in its own behalf and in behalf and as the agent of the holders of its common stock.

The the defendants, Maricopa County, Pima County, Graham County, and Mohave County, each are and at all times herein mentioned, were duly organized and existing counties of the state of Arizona, and political subdivisions of said state:

That Harry M. Moore is a citizen and resident of Maricopa County, Arizona, and at the time of the filing of the or- [22] iginal complaint in this cause, was the duly elected, qualified and acting County Treasurer and Ex Officio Tax Collector of said county; that since the filing of said original complaint he has been succeeded in said office by Ed. Oglesby, a citizen and resident of said Maricopa County, and that said Ed. Oglesby is now the duly elected, qualified and acting County Treasurer and

Ex Officio Tax Collector of Maricopa County, and is sued herein as such officer, having been duly substituted as a party defendant in place of the said Harry M. Moore;

That the defendant, J. D. Brush, is a citizen and resident of Maricopa County, Arizona, and is the duly elected, qualified and acting County Assessor of said County, and is sued herein as such officer;

That the defendants C. W. Peterson, John A. Foote and Geo. Frye, are citizens and residents of Maricopa County, Arizona, and are now and at all times herein mentioned were the duly elected, qualified and acting members of and have constituted and do now constitute the Board of Supervisors of said Maricopa County and the County Board of Equalization of said county;

That Daniel E. Garvey is a citizen and resident of Pima County, Arizona, and at the time of the filing of the original complaint in this cause, was the duly elected, qualified and acting County Treasurer and Ex Officio Tax Collector of said county; that since the filing of said original complaint, Wallace Bransford, a citizen and resident of Pima county, Arizona, has succeeded said Daniel E. Garvey as County Treasurer and Ex Officio Tax Collector of said county, and is sued herein as such officer, having been legally substituted as a party defendant in said cause in place of the said Daniel E. Garvey;

That the defendant Charles M. Taylor, is a citizen and [23] resident of Pima County, Arizona, and is the duly elected, qualified and acting County As-

sessor of said county, and is sued herein as such officer.

That Warren A. Grossetta, R. H. Martin and J. B. Mead are citizens and residents of Pima County, Arizona, and at the time of the filing of the original complaint in this cause, were the duly elected, qualified and acting members of the Board of Supervisors of said Pima County and the Board of Equalization of said county;

That since the filing of the original complaint in this cause, Thomas Collins, a citizen and resident of Pima County, Arizona, has been duly elected a members of the Board of Supervisors of Pima County, Arizona, to succeed Warran A. Grossetta, and that said Thomas Collins, R. H. Martin and J. B. Mead do now constitute the Board of Supervisors of Pima County, Arizona, and are sued herein as such officers, the said Thomas Collins having been substituted as a party defendant in place of Warren A. Grossetta;

That Charles M. Geitz was a citizen and resident of Graham County, Arizona, and was the duly elected, qualified and Acting County Treasurer and Ex Officio Tax Collector of said county at the time of the filing of the original complaint in this cause; that since the filing of the original complaint in this cause Earl M. Lines has succeeded the said Charles M. Geitz as the duly elected, qualified and acting County Treasurer and Ex Officio Tax Collector of said county and is sued herein as such officer, having

been substituted as a party defendant in place of said Charels M. Geitz;

That the defendant, Alvin Goodman, is a citizen and resident of Graham County, Arizona, and is the duly elected, qualified and acting County Assessor of said county, and is sued herein as such officer:

[24]

That J. W. Greenhalgh, Glen Hoopes and Virgil McEuen, are citizens and residents of Graham County, Arizona, and at the time of the filing of the original complaint in this cause, were the duly elected, qualified and acting members of, and constituted the Board of Supervisors of said Graham County, and the County Board of Equalization of said county;

That since the filing of the original complaint in this cause, Ernest D. Householder and M. E. Dubois, citizens and residents of Graham County, Arizona, have succeeded J. W. Greenhalgh and Virgil McEuen as members of the Board of Supervisors of said Graham County, and the said Glen Hoopes, Ernest D. Householder and M. E. Dubois now constitute the Board of Supervisors of said Graham County and the Board of Equalization of said county, and are sued herein as such officers, the said Ernest D. Householder and M. E. Dubois having been substituted as parties defendant in the place of J. W. Greenhaigh and Virgil McEuen;

That C. B. Tatum is a citizen and resident of Mohave County, Arizona, and at the time of the filing of the original complaint in this cause was the

duly elected, qualified and acting County Treasurer and Ex Officio Tax Collector of said county; that since the filing of said original complaint he has been succeeded in said office by A. M. Cook, a citizen and resident of Mohave County, and that said A. M. Cook is now the duly elected, qualified and acting County Treasurer and Ex Officio Tax Collector of Mohave County, Arizona, and is sued herein as such officer, having been duly substituted as a party defendant in the place of said C. B. Tatum;

That the defendant, W. O. Ruggles is a citizen and resident of Mohave County, Arizona, and is the duly elected, qualified and acting County Assessor of said county, and is sued herein as such officer;

[25]

That the defendants, F. L. Hunt, W. D. Lawe and E. T. Lyons are citizens and residents of Mohave County, Arizona, and at the time of the filing of the original complaint in this cause were the duly elected, qualified and acting members of the Board of Supervisors of said Mohave County, and the Board of Equalization of said county; that since the filing of the original complaint in this cause, William Mackie and George F. Moser, each a citizen and resident of Mohave County, Arizona, have been duly elected members of the Board of Supervisors of Mohave County, Arizona, to succeed F. L. Hunt and E. T. Lyons, and that said W. D. Lawe, William Mackie and George F. Moser, do now constitute the Board of Supervisors of Mohave County, Arizona, and are sued herein as such officers, the

said William Mackie and George F. Moser having been substituted as parties defendant in place of F. L. Hunt and E. T. Lyons.

That the defendants, Frank Luke, Thad M. Moore and D. C. O'Neil are residents of Maricopa County, Arizona, and are now and at all times herein mentioned have been the duly elected, qualified and acting members of and have constituted, and do now constitute the State Tax Commission and State Board of Equalization of the State of Arizona.

II.

That this is a suit of a civil nature, in equity, arising under the Constitution and laws of the United States, and that the amount involved herein, exclusive of interest and costs, exceeds the sum or value of Three Thousand ($3,000.00) Dollars.

III.

That the plaintiff now exercises, and from and since the 11th day of February, 1935, has exercised in the City of Phoenix, and the Cities of Glendale and Mesa, in Maricopa County, Arizona, in the city of Tucson, and the town of Ajo, [26] in Pima County, Arizona, in the town of Safford, Graham County, Arizona, in the city of Kingman, Mohave County, Arizona, and in the cities of Globe and Miami, and town of Hayden, in Gila County, Arizona, in the town of Clifton, Greenlee County, Arizona, in the towns of Superior, Coolidge and Casa Grande, in Pima County, Arizona, and in the

city of Prescott, Yavapai County, Arizona, normal banking powers conferred upon it by law as a national banking association, including the receiving of commercial deposits, demand and time saving deposits, evidenced by certificates of deposit, the purchase and sale of government, state and municipal bonds, the maintenance of a trust department, the purchase and discount of commercial paper, the loaning of money on financial statements, and upon collateral security, and upon real estate and chatiel mortgages executed to the plaintiff or assigned to and deposited with it as collateral security, and the investment of money in notes, bonds and mortgages and other securities, and evidences of indebtedness.

IV.

That is was and is provided by Section 1, of Article IX of the Constitution of the State of Arizona, that all taxes shall be uniform upon the same class of property within the territorial limits of the authority levying the tax.

That it was and is provided by Section 2, of Article IX of the Constitution of the State of Arizona, that there shall be exempt from taxation all federal, state, county and municipal property.

That it was and is provided by Section 3068, Revised Code of Arizona for 1928, that all taxable property within said state must be assessed at its full cash value, and that the term, "full cash value" shall mean the price for which property would sell if voluntarily offered for sale by the [27] owner

thereof upon such terms as such property is usually sold, and not the price that might be realized if such property were sold at a forced sale.

That it was and is provided by Section 3069, Revised Code of Arizona for 1928, as amended by Chapter 110, Session Laws of Arizona for 1931, that the property of corporations shall be assessed and taxed, and no assessment shall be made on shares of stock of corporations, nor shall any holder thereof be taxed for such shares, but that said provisions with reference to the taxing of shares of stock shall not apply to banking corporations, building and loan associations or corporations, and corporations or associations engaged in the business of using money wherewith to make money for the owners of their shares, and that the shares of stock of such banking corporations, and other corporations and associations shall be assessed and taxed as other property in the name of the shareholders of the several shares thereof, to be entered and taxed in the name of and be payable by such corporation or association.

V.

That is was and is provided by Section 11, of Article IX of the Constitution of Arizona, that the manner, method and mode of assessing, equalizing, and levying taxes in the State of Arizona, shall be such as may be prescribed by law.

That it was and is provided by Section 3074, Revised Code of Arizona, 1928, that between the first Monday in January, and the first day of May, of

each year, the County Assessor, (except as otherwise required by the State Tax Commission) shall ascertain by diligent inquiry and examination all property in his county subject to taxation, the names of all persons owning, claiming, or having possession or control thereof, determine the full cash value of all such property, and list and assess the same to the person owning, claiming or [28] having the possession, charge, or control thereof.

That it was and is provided by Section 3070, Revised Code of Arizona for 1928, that upon the demand of the Assessor the officers in charge of any banking corporation or corporations or association engaged in the business of using money wherewith to make money, shall make out and deliver to the assessor a sworn statement showing the number of shares, the name and residence of each shareholder, and the number of shares owned by him, the surplus, reserve fund and undivided profits, and the par and market value of the shares, and that the full cash value of such shares shall be ascertained according to the best information which the assessor may be able to obtain, whether from any return to any officer of the state or the United States, from actual sales of the stock, or from other trustworthy sources, and that every such shareholder shall, where such corporation or association is located, render at their full cash value to the assessor all shares owned by him therein, and if the shareholder fail to do so the assessor shall list and assess such unrendered shares as other unrendered property, and

that the taxes due thereon shall be paid by such corporation or association, and shall be a lien against and assessed to such shares of stock, and no such corporation or association shall pay any dividends to any shareholders who is in default in the payment of taxes due on his shares, nor shall it permit the transfer on its books of any shares the owner of which is in default in the payment of his taxes on the same.

That it was and is provided by Section 3071, Revised Code of Arizona for 1928, that every such corporation or association for the purpose of said assessment shall be considered as located in every county, city or town wherein it has an office for the purpose of carrying on its business, and the [29] shares shall be subject to taxation in any county, city or town wherein it has such office, that the officer of such corporation or association shall state in his statement if his association or corporation is subject to taxation in more than one county, city or town, and the proportion of its assets situated in each thereof, and that the shares of such corporation or association shall be taxed in each county, city or town, for only such portion of their assets as the assets situated in that county, city or town bear to the assets of the entire corporation or association, and that when a bank maintains branches or conducts business in more than one county, city or town, the assessed value of the capital stock shall be apportioned among the several counties, cities and towns in which the main office or such branches

are maintained or business conducted, and the amount apportioned to each county, city or town shall not be less than the actual cash value of the real and personal property of such bank situated in such county, city or town.

VI.

That on the 11th day of February, 1935, the day plaintiff engaged in the banking business as a national bank, and at all times thereafter until after the first Monday in May, 1935, the amount of its capital stock was $260,000.00, its surplus was $260,000.00, its undivided profits were $90,026.52, and its resources $89,000.00, making a total as the basis for the valuation of its shares of common capital stock of $699,026.52. That its common capital stock consisted of 52,000 shares, of the par value of $5.00 each. That to provide the plaintiff with sufficient capital to enable it to comply with the laws and regulations pertaining to national banks in the acquisition and transaction of the banking business which it acquired on said 11th day of February, 1935, the Reconstruction Finance Corpora- [30] tion of the United States of America, purchased from the plaintiff, and the plaintiff sold to said Reconstruction Finance Corporation, $1,240,000.00 par value of preferred stock. That said preferred stock so issued and sold to said Reconstruction Finance Corporation consisted of 198,400 shares of the par value of $6.25 each, and that all of said preferred stock was issued to said Reconstruction Finance

Corporation, and said Reconstruction Finance Corporation paid to plaintiff therefor the par value thereof, on or prior to said 11th day of February, 1935, and ever since the issuance thereof said preferred stock has been and now is owned and held by and is the property of the Reconstruction Finance Corporation of the United States of America.

VII.

That after the 11th day of February, 1935, and prior to the first day of May, 1935, an officer of the plaintiff, duly authorized for said purpose, made and delivered a statement such as is provided for by Sections 3070 and 3071, Revised Code of Arizona for 1928, to each of the assessors of the respective counties in which its main office or any of its branches was and is situated, including all of the counties made parties defendant to this suit. That each of said statements showed the number of plaintiff's shares, the names and residences of each shareholder owning and holding the shares of its common stock and the shares of its preferred stock above mentioned, the number of shares owned by each shareholder, the amount of capital, surplus and undivided profits, as above stated, and the par value of its shares, both common and preferred, as is required by Section 3071, Revised Code of Arizona, 1928. Each of said statements showed the proportion of plaintiff's assets situated in each of the counties in which its principal office or a branch thereof was and is situated. That said [31] statement showed

the common capital stock of the plaintiff was $260,000.00, that its surplus was $260,000.00, that its undivided profits were $90,026.52, and that its reserves were $89,000.00, making a total as the basis for the valuation of its common capital stock of $699,026.52. That said statement also showed that the following percentages of said amount were properly apportioned to the respective counties, to-wit:

Maricopa County,	54.57 per cent
Pima County,	26.53 per cent
Graham County,	2.34 per cent
Mohave County,	1.37 per cent
Gila County,	6.86 per cent
Greenlee County,	3.32 per cent
Pinal County,	3.22 per cent
Yavapai County,	1.79 per cent

VIII.

That for many years immediately prior to the year 1934, it was the uniform practice followed by the county assessors of the several counties of the state of Arizona, and approved by the Tax Commission of the State of Arizona, to value for tax purposes the shares of stock of each of the banks in the State of Arizona at an aggregate amount equal to the capital stock, surplus and undivided profits of each of said banks, as shown by the books of said bank, and that in the year 1934, all or substantially all of the banks in the State of Arizona protested to the State Tax Commission of the State

of Arizona, sitting as a Board of Equalization, against the valuation of their shares of stock on said basis, for the reason that the same constituted an assessment of the capital stock of said banks at its full cash value, when other classes of property in said state were assessed at an amount equal to 60% of their cash value, and that in the consideration of said protests, said State Tax Commission, sitting as a Board of Equalization, in the year 1934, made a thorough examination of the valuation of shares of bank stock in the state of Arizona, and after such [32] examination ordered that shares of bank stock should be valued by the following method: (1) That the statements filed by said banks should be revised and corrected by the use of the best information available; (2) That the shares of stock should be valued at 75% of the capital stock, surplus and undivided profits as shown by said revision of the banks statement. That said Tax Commission made no determination with reference to the taxability of shares of preferred stock of banks owned and held by Reconstruction Finance Corporation and expressly left that question to be determined by the courts.

IX.

That plaintiff is informed and believes, and upon such information and belief states that the State Tax Commission of the State of Arizona, said Tax Commission consisting of the same individuals as the State Board of Equalization, in the exercise of

its supervisory powers over the county assessors of the State of Arizona, directed and instructed the county assessors of the State of Arizona to value for tax purposes for the year 1935, the shares of stock of all banks in the state at an amount equal to 75% of the capital stock, surplus and undivided profits of said banks, and that the county assessors of the several counties of the state, (except the county assessor of Mohave county) in pursuance of said instructions of the State Tax Commission, valued for tax purposes for the year 1935 the capital stock of all banks in their respective counties at an amount equal to 75% of the capital stock, surplus and undivided profits of said banks as shown by the books of said banks.

X.

That in pursuance of a general plan and understanding among the taxing officials of the state of Arizona, including the members of the State Board of Equalization who are parties [33] to this suit it has been the practice of the taxing officials of the state of Arizona for many years to assess property in the state of Arizona generally, at an amount equal to approximately 60% of its full cash value, and that said practice, in pursuance of said general plan and understanding among said taxing officials, was continued and followed in the year 1935, and was approved by the State Board of Equalization in the year 1935.

XI.

That the county assessors of Gila, Greenlee, Pinal and Yavapai Counties, fixed the valuation of plaintiff's shares of stock for tax purposes for the year 1935 in their respective counties by following the instructions of the said State Tax Commission, and applying the same to the statements filed by the plaintiff in their respective counties, that is to say, by adding together the common capital stock, surplus and undivided profits and reserves, as shown by said statement, and taking the percentage of the sum so arrived at shown by plaintiff's statement as the proper percentage for that county, and then taking 75% of the amount so arrived at as the assessable value of plaintiff's shares of stock in said county. That plaintiff makes no objection to the valuations arrived at by the counties of Gila, Greenlee, Pinal and Yavapai, as hereinabove set forth, and has not made, and does not now make any protest or objection to said valuations.

XII.

That the County Assessor of Maricopa County arrived at the valuation to be placed upon plaintiff's shares of stock for tax purposes for the year 1935 by adding together the amount of the common capital stock, surplus, undivided profits and reserves shown by the statement filed by him as aforesaid, and adding to the amount so arrived at the sum of $1,240,000.00, [34] being the par value of the preferred stock of plaintiff issued to and owned and

held by the Reconstruction Finance Corporation, as hereinbefore alleged, the total so arrived at being the sum of $1,939,026.00. Said county assessor then took 54.57 per cent of said sum, (said 54.57% being the percentage shown by the statement filed with him by plaintiff as the percentage properly apportioned to Maricopa county), thus arriving at $1,058,126.77 as the amount apportioned to Maricopa County, and then computed 75% of said amount, making the sum of $793,595.08, which sum said assessor placed on the tax roll as the assessable value of plaintiff's shares of stock for tax purposes for the year 1936 in said Maricopa County. That of the aforesaid valuation of $793,595.08, 54.57% of 75% of $1,240,000.00, or $507,501.00, was and is the valuation placed by said county assessor upon Maricopa County's proportion of the shares of preferred stock of the plaintiff owned and held by the Reconstruction Finance Corporation.

XIII.

That the county assessor of Pima county assessed the shares of stock of the plaintiff in said county by placing a valuation on the real and personal property owned and held by the plaintiff in said county as follows, to-wit:

ASSESSED VALUATION OF VALLEY NATIONAL BANK OF ARIZONA, PIMA COUNTY

1935

Co-Apportionment—13,795.6 shares of stock @ *$23,7459*
Totalling $327,590.00

REAL ESTATE, IMPROVEMENTS & PERSONAL PROPERTY HOLDINGS OF VALLEY NATIONAL BANK OF ARIZONA, PIMA COUNTY.

1935

Description of	Lot	Blk	Real Estate Valuation	Imps. Valuation	Personal Prop. Valuation
Ajo	4	15	125		
Ajo	5	15	150	1405.	785.00
					[35]
Tucson S 62′ of N 123.04′ of W. 72.94′ of Lot 3	10	208	13,020		
Tucson N 58′ of W 64.73′ of Lot 3 together with a 3′ strip on S—sub	12	208	27,945	171130	110,000.00
Rincon Heights	13	8	110		
Rincon Heights	14	8	110	1370	
S½SW¼SW¼SW¼ (3)	21-13-14	D-4 Acres	10		
		W-1	5		
E½SW¼ less parcel 1 & 5 (4)	26-13-14	D-58.81a	335		
S½SE¼NW¼ & NW¼ SE¼NW¼ & E½SE¼ NW¼ (6)	27-13-14	P-20a	220		
		W-15a	15		
S½SW¼NW¼ (8)	27-13-14	P-17a	190	55	
		W-3a	5		
S½SW¼NW¼ (17)	27-13-14	1-5	115		
		W-15	15		
Part of N½ S½ of Sec 28 lying N of Rillito R (18)	28-13-14	D-25	75		
		W-31.3	30		

Description of	Lot	Blk	Real Estate Valuation	Imps. Valuation	Personal Prop. Valuation
E½SW¼NW¼ & E½ NW¼SW¼NW¼ & E½SW¼SW¼NW¼ (23)	28-13-14	P-10	110		
		D-10	30		
		W-7.5	10		
S¾S½SW¼NE¼ (28)	28-13-14	1-5	115		
		D-10	60		
E½ of SW¼NW¼NW¼ & E½NW¼NW¼NW¼ (42)	28-18-14	P-1.6	20		
		W-5.9	5		
		Total	$327,590.00		

Detail of Personal Property:
Bank Fixtures ..... $110,000.
Bank Fixtures in Ajo ..... 875.

XIV.

That it appears from the foregoing computation made by the county assessor of Pima County that the valuation arrived at by said county assessor in Pima County for the year 1935, was $327,590.00. That the assessment made by said assessor [36] does not show whether said valuation was intended to be imposed upon the tangible real and personal property owned by plaintiff in said county, or upon plaintiff's common capital stock, or upon plaintiff's preferred stock. If said valuation is construed as imposed upon plaintiff's real and personal property, it is wholly void as unauthorized by the statutes of the state of Arizona, and if it is construed as imposed upon plaintiff's common stock, it amounts to

a valuation of that portion of plaintiff's shares of common stock assessable in Pima county of approximately $6.30 per share, which is the equivalent of a total valuation of plaintiff's shares of common stock in all counties of approximately $23.75 per share. That $400,000.00 worth of the $1,240,000.00 par value of plaintiff's preferred stock was purchased from plaintiff by Reconstruction Finance Corporation for the express purpose of enabling plaintiff to purchase the assets of Consolidated National Bank, a national bank doing business at Tucson, Pima County, Arizona. That said assets of said Consolidated National Bank were practically all situated in said Pima county, and were purchased by plaintiff in February, 1935. That among said assets were the banking furniture and equipment and the banking house and office building owned by said Consolidated National Bank in the city of Tucson, which constitute practically all of the tangible real and personal property assessed in the manner aforesaid, as constituting the assessable value of plaintiff's shares of stock in Pima county.

XV.

That the aforesaid valuation of the county assessor of Pima county was excessive and illegal to the extent following: The total of the common capital stock of $260,000.00, the surplus of $260,000.00, the undivided profits of $90,926.52, and the reserves of $89,000.00, is $699,026.52, which represents [37] the shares of common capital stock of the plain-

tiff. Of this amount 26.53%, or the sum of $185,451.73 is properly apportioned to Pima county, representing that portion of plaintiff's shares of common stock apportioned to Pima county. To make allowance for probable shrinkage in book assets, and the normal difference between the book value of assets and the actual value of the shares of stock in accordance with the method prescribed by the State Tax Commission as aforesaid, one-fourth thereof, or the sum of $46,362.93 must be deducted, leaving the amount of $139,088.80 as the actual cash value for the year 1935, of that portion of plaintiff's shares of common stock which is assessable in Pima county. That the excess over said sum of $139,088.80 assessed against the shares of stock of plaintiff by the county assessor of Pima County, which is the amount of $188,501.20, was assessed on account of valuations represented by plaintiff's preferred stock owned and held by the Reconstruction Finance Corporation.

XVI.

That the County Assessor of Graham County assessed the shares of stock of the plaintiff in said county by placing a valuation on the real and personal property owned and held by the plaintiff in said county as follows:

West 30 feet of Lot 1, Safford, Block 39:	
Value of Land	$ 2,250.00
Value of Improvements	14,615.00
Lot 8, K & G, Block 2:	
Value of Land	$ 120.00
Summary of Values:	
Total personal property	$ 5,605.00
Total Real Estate	2,370.00
Total improvements	14,615.00
Total for County and State taxation	$22,590.00

That in addition to the foregoing, said Assessor assessed [38] certain real estate acquired by the plaintiff in the year 1935, prior to the date that the above and foregoing assessment was made, from The Consolidated National Bank of Tucson, as follows:

Northwest Quarter (NW¼) and West Half (W½) of the Northeast Quarter (NE¼) and Northwest Quarter (NW¼) of the Southeast Quarter (SE¼) of Section 21, Township 6, Range 25:	
Acres	142
Class of Land	CUL
Value of Land	$4,050.00
Lots One (1) and Two (2), Section 21, Township 6, Range 25:	
Acres	50
Class of Land	CUL
Value of Land	$1,420.00
Value of Improvements	1,200.00
Consolidated National Bank:	
Acres	125
Class of Land	W
Value of Land	$ 125.00
Total Real Estate	$5,595.00
Total Improvements	1,200.00
Total for County and State Taxes	$6,795.00

That all of the foregoing property of plaintiff assessed by said county assessor of Graham county was acquired by plaintiff on or prior to the 11th day of February, 1935, from The Valley Bank & Trust Company, a State Bank, and the Consolidated National Bank of Tucson, a National Banking Association, both of which institutions were actively engaged in transacting a banking business at and prior to the time when said property was transferred by them to the plaintiff and that all of said property was included in the statement of capital, surplus, undivided profits and reserves filed by the plaintiff with said county assessor as aforesaid.

XVII.

That the total amount of the assessment in Graham county, being the sum of $22,590.00, plus $6,795.00, or [39] $29,385.00, as shown by the above tabulations, was arrived at by said county assessor by taking the assessable value of all of the real and personal property owned by the plaintiff in said county. That the assessment made by said assessor does not show whether said valuation was intended to be imposed upon the real and personal property owned by the plaintiff in said county, or whether it was intended to be imposed upon plaintiff's common capital stock or upon plaintiff's preferred stock. If construed as imposed upon the tangible real and personal property of plaintiff in said county, it is wholly unauthorized and void under the statutes of the state of Arizona. If it is construed as imposed

upon plaintiff's common stock, it amounts to a valuation of that portion of plaintiff's shares of common stock assessable in Graham county, of approximately .56¢ per share, which is the equivalent of a total valuation of plaintiff's shares of common stock in all counties of approximately $24.00 per share. That $840,000.00 worth of the $1,240,000.00 worth, par value of plaintiff's preferred stock was purchased from plaintiff by Reconstruction Finance Corporation for the express purpose of enabling plaintiff to pay off a debenture of $840,000.00 owed by The Valley Bank & Trust Company to Reconstruction Finance Corporation. Said The Valley Bank & Trust Company was a state bank, having its principal place of business in Maricopa County, and branches in several other counties, including Graham County. That all of the assets of said bank were purchased by plaintiff in February, 1935, and said debenture of $840,000.00 was paid by plaintiff out of the proceeds of plaintiff's preferred stock sold to Reconstruction Finance Corporation. That the assets of the Graham county branch of said The Valley Bank & Trust Company were 4.427% of the total assets of said The Valley Bank & Trust Company, and the pro rata part of the Graham county branch of said debenture of [40] $840,000.00 was 4.427% of said $840,000.00, or $37,186.80 of the proceeds plaintiff received from the sale of its preferred stock to Reconstruction Finance Corporation went into said Graham county branch. That the

aforesaid valuation by said county assessor of Graham county was and is excessive and illegal to the extent following: The total of the common capital stock of $260,000.00, the surplus of $260,000.00, and the undivided profits of $90,026.52, and the reserves of $89,000.00 which represents the shares of common capital stock of plaintiff, is $699,026.52. Of this amount, 2.34%, or $16,357.22, is properly apportioned to Graham county, representing that portion of plaintiff's shares of common stock apportioned to Graham county. From said sum must be deducted one-fourth thereof, or the sum of $4,089.80 to make allowance for probable shrinkage in book assets and the normal difference between the book value of the assets and the actual value of the shares of stock, in accordance with the method prescribed by the State Tax Commission, as aforesaid, leaving the amount of $12,267.42 as the true valuation for tax purposes for the year 1933 of that portion of plaintiff's shares of common stock which is assessable in Graham county. That the valuation arrived at by the county assessor of Graham county in excess of said sum of $12,267.42, said excess being $17,117.58, was assessed upon values represented by preferred stock of the plaintiff owned and held by the Reconstruction Finance Corporation.

XVIII.

That if the aforesaid assessments by the county assessors of Pima and Graham counties are construed as assessments and valuations of the property

owned and held by the plaintiff in said counties as other property held by individuals and other corporations of said counties are assessed and valued, said assessments and valuations are wholly unauthorized and void [41] for the reason that under the provisions of Section 3069, Revised Code of Arizona for 1928, and the decisions of the Supreme Court of Arizona construing said section, the property of banking associations or corporations engaged in the business of banking is not assessable or taxable, but only the shares of stock of such banking association or corporations are assessable and taxable.

That if the aforesaid assessments and valuations in Pima and Graham counties are construed as assessments and valuations of the shares of stock of the plaintiff, both common and preferred, and the taxes computed thereon payable by the holders of the common and preferred stock, said assessments and valuations are wholly void for the reason that said shares of preferred stock being owned and held by the Reconstruction Finance Corporation of the United States, are wholly exempt from state, county and local taxation under the Constitution and laws of the United States, and the Constitution and laws of the State of Arizona, and said assessments do not segregate the valuation placed upon the shares of common stock from the valuation placed upon the shares of preferred stock. That the shares of preferred stock of plaintiff are preferred both as to

dividends and as to distribution of assets in case of liquidation, and are limited to participation in dividends and in distribution of assets in the event of liquidation, and that as a result of such preferences and limitations so conferred and imposed upon them, the relation of the actual value of said shares to the par value thereof is not the same as the relation of the actual value of the shares of common stock to the par value of said common shares.

That if the aforesaid assessments in Pima and Graham counties are construed as assessments and valuations of the shares of common stock of the plaintiff, and the taxes computed [42] thereon payable wholly by the owners of said shares of common stock, then such assessments and valuations are wholly void, for the reason that the same are excessive, confiscatory and discriminatory, greatly in excess of the actual value of said common shares, and discriminatory between the holders of said shares of common stock and the holders of common shares of stock in other banks, and also between the holders of the shares of common stock in the plaintiff, and other classes of property assessed in said counties of Pima and Graham, and in said state of Arizona, for the following reasons:

1. That said assessments and valuations are void and confiscatory for the reason that in Pima county the sum of $188,501.20 of the total assessment of $327,590.00, and in Graham county the sum of $17,117.58 of the total assessment of $29,385.00, is as-

sessed against said shares of common stock, not by reason of any assets represented by said shares of common stock, or by reason of any inherent value of said shares of common stock, but by reason of values represented by preferred stock of the plaintiff owned and held by the Reconstruction Finance Corporation.

2. That said assessments and valuations are excessive and confiscatory for the reason that said valuations of $327,590.00 in Pima county, if deemed the valuation placed upon the shares of common stock of plaintiff, is a valuation of approximately $23.75 per share, and said valuation of $29,385.00 in Graham county, if deemed a valuation placed upon the shares of common stock of plaintiff is a valuation of approximately $24.00 per share, when the book value of said shares of stock determined by the value of the assets of the plaintiff, as shown by plaintiff's books is approximately $13.50 per share, and the actual value of said shares of common stock as determined by actual sales made during the assessment period [43] for the year 1935 is approximately $11.00 per share.

3. That the said assessments and valuations of $327,590.00 of Pima county, and of $29,385.00 in Graham county, if construed as assessments upon plaintiff's shares of common stock, are discriminatory against the holders of plaintiff's shares of common stock and in favor of the holders of common stock in other banks in the state of Arizona, for the

reason that the holders of the common stock in other banks (said banks as far as known to the plaintiff having issued no shares of preferred stock owned or held by the Reconstruction Finance Corporation), have been assessed and valued by the direction of the State Tax Commission for tax purposes for the year 1935 at 75% of the capital stock, surplus and undivided profits of said banks, and that the holders of common stock of the plaintiff have been assessed for tax purposes in said two counties for the year 1935 at approximately twice the capital stock, surplus and undivided profits of the plaintiff.

4. That if said assessments and valuations of $327,590.00 in Pima county, and $29,385.00 in Graham county, are construed as assessments and valuations upon portions of plaintiff's common stock said assessments and valuations discriminate against the holders of the common stock of the plaintiff and in favor of the owners and holders of other classes of property in the state of Arizona, in that said shares of common stock of the plaintiff have been valued and assessed at approximately twice the actual value thereof, when other classes of property in the state of Arizona, by a general plan adopted by said taxing officials of the state of Arizona, have been valued and assessed at not to exceed 60% of their actual cash value.

5. That if said assessments and valuations are construed as assessments and valuations of the shares of common stock of plaintiff, said assessments and valuations discriminate [44] against the

owners and holders of plaintiff's shares of common stock and in favor of the owners and holders of other moneyed capital in the state of Arizona, in violation of Section 548, Title 12 of United States Code Annotated, in that said shares of stock have been assessed at approximately twice their actual value, while other moneyed capital in the hands of individual citizens of the state of Arizona coming into competition with the business of national banks, has been assessed at not to exceed 75% of its actual cash value.

XIX.

That the County Assessor of Mohave County assessed the shares of stock of the plaintiff as follows: He added together its common capital stock of $260,000.00, its surplus of $260,000.00, its undivided profits of $90,026.52, and its reserves of $89,000.00, making a total valuation of its shares of common stock of $699,026.52, and taking 1.37% thereof as the proper percentage for Mohave County, thus arriving at a calculation of $9,576.66, which said county assessor placed on the tax roll as the valuation of plaintiff's shares of stock for tax purposes for the year 1935 in his county; that said valuations so made by the county assessor of Mohave County included no valuations attributable to preferred stock of the plaintiff, and was proper, except that there should have been deducted from the sum of $9,576.66 as shown by the statement filed by plaintiff, one-fourth thereof, or the sum of $2,394.16 and leaving the sum of $7,182.50 as the actual cash value

for tax purposes for the year 1935 of that portion of plaintiff's shares of common stock which is assessable in Mohave county. That said deduction of one-fourth must be made as aforesaid in order to place the valuation of plaintiff's shares of stock on the same basis as the valuation of the shares of stock of other banks in the state of Arizona, which were all valued [45] either by the county assessors or the State Board of Equalization by the method prescribed by the State Tax Commission hereinabove set forth.

XX.

That within the time provided by law plaintiff *filed* a written protest against the foregoing valuations of its shares of stock herein complained of with the County Board of Equalization in each of the counties of Maricopa, Pima, Graham and Mohave, being all of the counties in which the assessments and valuations of its shares of stock are complained of herein, and that within the time provided by law plaintiff appeared before the County Board of Equalization in each of said counties and urged the correction and reduction of said assessments in all respects herein complained of. That each of said County Boards of Equalization heard the plaintiff and refused and denied any relief to the plaintiff.

XXI.

That none of the aforesaid County Boards of Equalization made any changes in the valuations made as aforesaid by the respective county assessors

upon the shares of stock of the plaintiff, and the Clerk of each of said boards of supervisors, immediately after the July adjournment of said Boards of Equalization, transmitted to the State Board of Equalization the respective valuations made as aforesaid by the respective county assessors, which valuations were as follows, to-wit:

County	Valuation on Tax Roll
Maricopa	$793,595.08
Pima	327,590.00
Graham	29,385.00
Mohave	9,576.66

XXII.

That on or about the 7th day of August, 1935, the plaintiff filed a written protest with the defendants, Frank Luke, [46] Thad M. Moore and D. C. O'Neil, sitting as a State Board of Equalization of the State of Arizona, protesting against the valuations of its shares of stock in Maricopa County, Pima County, Graham County and Mohave County, protesting against said valuations in all respects herein complained of, and on said 7th day of August, 1935, the plaintiff appeared before said Frank Luke, Thad M. Moore and D. C. O'Neil, sitting as a State Board of Equalization, and urged the correction and reduction of said valuations in all respects herein complained of. That said defendants, sitting as a Board of Equalization heard the plaintiff and refused and denied any relief to the plaintiff.

XXIII.

That within the time provided by law the said State Board of Equalization fixed the rate of taxation to be levied for state purposes transmitted to the Board of Supervisors of each of the respective counties that are parties defendant to this suit, a statement of the changes which it had made in the assessment, (no change whatever having been made in the assessment of plaintiff's shares of stock) and the rate of taxes which was to be levied and collected within said county for state purposes. That each of said Board of Supervisors received said statement and ordered placed on the tax roll the respective valuations made by the respective county assessors as hereinabove alleged.

XXIV.

That after the completion of the valuation of plaintiff's shares of stock and the placing thereof on the tax rolls as aforesaid in the respective counties, the Board of Supervisors and the governing bodies of the cities and towns in each of said counties, (except the city of Phoenix, in Maricopa County), finally determined the estimates provided for by Section 3098 Revised Code of Arizona for 1928, and the school superintendents [47] in said counties furnished to said Boards of Supervisors the estimates provided for by Section 1090, Revised Code of Arizona for 1928, and said Boards of Supervisors assessed taxes for the several amounts estimated as well as the state tax, at the rate fixed as

aforesaid, upon the taxable property of the county and computed and carried out the real and personal taxes and total taxes of each person on said tax rolls, and computed at the proper tax rates determined by the Board of Supervisors of the State Board of Equalization upon the aforesaid valuations, and entered upon the said tax rolls as taxes upon the shares of stock of the shareholders of the plaintiff, and as payable by the plaintiff, the following amounts, to-wit:

Maricopa	$49,810.86
Pima	20,362.98
Graham	1,894.88
Mohave	399.08

XXV.

That upon completion of the tax rolls for the year 1935, said tax rolls containing thereon the respective items of taxes set forth in Paragraph XXIV above, the Chairman of the Board of Supervisors of each of said counties, as prescribed by statute, annexed thereto under his hand, a warrant, commanding the County Treasurer and Ex-Officio Tax Collector to collect from the several persons named in said tax roll; including plaintiff, one-half of the taxes set opposite their respective names, including the illegal and void taxes, taxed, assessed and levied as aforesaid, on or before the first Monday in November, 1935, and the other one-half of said taxes on or before the first Monday in May, 1936. That said tax rolls, together with said warrants,

were delivered to the respective county treasurers of said counties parties defendant hereto, in the manner and within the time provided by law. [48]

XXVI.

That upon receipt of said assessment and tax rolls each of said county treasurers being parties defendant hereto, gave official notice specifying that one-half of said taxes, including said illegal and void taxes so levied and assessed upon plaintiff's said shares of stock, would be due and payable on the first Monday in September, 1935, and would become delinquent on the first Monday in November, 1935, at 5:00 o'clock p. m., and that the remaining one-half of said taxes would be due and payable on the first Monday in March, 1936, and would become delinquent on the first Monday in May, 1936, at 5:00 o'clock p. m., and that unless said taxes were paid prior to becoming delinquent, interest would accrue thereon from the time of such delinquency at the rate of ten per cent per annum until paid, or until said property or such part thereof as was necessary had been sold, and thereafter interest would accrue thereon at the rate provided in the tax certificates issued covering the sale of said property, but not to exceed fifteen per cent per annum.

XXVII.

That before the first Monday in November, 1935, and before the filing of this bill of complaint, and

during the regular office hours of the respective county treasurers who are parties defendant hereto, plaintiff tendered and offered to pay to each of said county treasurers the amount of taxes which plaintiff believes to be justly due and owing by the owners and holders of its shares of common stock to said county treasurers for state, county and local taxes for the year 1935. The amounts which the plaintiff so tendered and offered to pay to each of said county treasurers are as follows:

Maricopa County,	$17,938.09
Pima County,	8,637.30
Graham County	808.58
Mohave County	298.78

[49]

The plaintiff determined the amounts so above tendered as the amounts justly due and owing to the said county treasurers for taxes for the year 1935, by computing the valuations of its common capital stock in the manner in which said county treasurers were directed to compute the same by the State Tax Commission, excluding, however, from said computation plaintiff's shares of preferred stock held by the Reconstruction Finance Corporation and the assets represented thereby. That is to say, plaintiff added together its common capital stock of $260,000.00, its surplus of $260,000.00, its undivided profits of $90,026.52, and its reserves of $89,000.00, making the sum of $699,026.52, and then took the proper percentage thereof

apportioned to each of said counties, to-wit: Maricopa County 54.47 per cent, Pima County 26.53 per cent, Graham County, 2.34 per cent, Mohave County, 1.37 per cent, which gave the following figures:

Maricopa County,	$381,458.77
Pima County	185,451.73
Graham County,	16,357.22
Mohave County,	9,576.66

and then took 75% of each of said amounts, thus arriving at the actual cash value in each of said counties for plaintiff's shares of stock as follows:

Maricopa County,	$286,094.08
Pima County,	139,088.80
Graham County	12,267.91
Mohave County,	7,182.50

and computed the tax at the respective rates as fixed in said counties by the proper authorities therein, thus arriving at the taxes in each of said counties at the amounts alleged to have been tendered.

That the amount so tendered by plaintiff is the amount of taxes which would have been assessed against the shares of common capital stock in the several counties that are parties [50] defendant hereto by the action of the assessing officials and State Board of Equalization if said taxing officials and said State Board of Equalization had applied the same basis of valuation to plaintiff's shares of

common capital stock as they applied to the shares of other banks, state and national, doing business in the state of Arizona, and is likewise the amount that the taxing officials and State Board of Equalization would have assessed plaintiff's shares of common capital stock if they had not attempted to impose additional taxes upon plaintiff by reason of the fact that preferred shares of stock of the plaintiff were owned and held by the Reconstruction Finance Corporation.

XXVIII.

That each of the said county treasurers aforesaid refused and continues to refuse to accept payment of the amount tendered upon the ground that said amount tendered was not the full amount of taxes assessed to and payable by plaintiff for the purposes for which it was tendered. That each of said county treasurers, on refusing said tender, declared that it was his duty to collect from plaintiff the amount of taxes assessed against plaintiff's shares of stock that appeared on his books, and that he would proceed to collect the same in accordance with the laws of the State of Arizona.

That plaintiff has been and is willing and able, and has stood ready and will continue to stand ready to pay to each of the above mentioned county treasurers the amounts tendered as aforesaid, and that if this court shall hold that the sums which plaintiff has tendered and offered to pay to the said county treasurers, or any of them, for the

purposes for which said tenders were made, are less than the amounts found justly and equitably due and owing by the plaintiff to the said county treasurers, or any of them, for 1935 taxes, plaintiff stands [51] ready, able and willing to pay, and will pay to the said county treasurers, and each of them, such other and further sum or sums as this court shall find to be just and equitable.

XXIX.

That it was and is provided by Section 3101, Revised Code of Arizona for 1928, as amended by Chapter 106, Session Laws of Arizona for 1931, that all taxes levied upon real or personal property shall be a lien upon the property assessed, which lien shall attach on the first Monday in January in each year and shall not be satisfied or removed until such taxes, penalties, charges and interest are paid or the property is finally vested in a purchaser under a sale for taxes, and that said lien shall be prior and superior to all other liens and encumbrances upon said property, except liens and encumbrances held by the State of Arizona. That it is further provided by said section, amended as aforesaid, that personal property shall be liable for taxes levied on real property and real property shall be liable for taxes levied on personal property, and that a judgment against real property for non-payment of taxes thereon or assessed to the personal property of the same person shall not be prevented by showing that the owner thereof was

possessed of personal property out of which the taxes could have been made.

That it was and is provided by Section 3070, Revised Code of Arizona, 1928, that the taxes due upon shares of banking corporations or associations shall be paid by such corporation or association and shall be a lien against and assessed to such shares of stock and no such corporation or association shall pay any dividends to any shareholder who is in default in the payment of taxes due on his shares, nor shall it permit the transfer on its books of any shares the owner of which is in default in the payment of his taxes on the same.

[52]

That it was and is provided by Section 3112 of the Revised Code of Arizona, 1928, that the county treasurer may at any time after receiving the tax roll, collect by distraint and sale, if not otherwise collected, the taxes due on personal property; that the sale must be at public auction after one weeks' notice of the time and place thereof, and must be of a sufficient amount of the property issued to pay the taxes, fees and costs, and that on payment of the purchase price and the delivery of the property with a bill of sale thereof, title thereto vest in the purchaser.

That it was and is provided by Section 15 of Title 103 of Arizona Session Laws of 1931, that taxes upon real estate if unpaid, shall become delinquent, first half, on the first Monday in Novem-

ber, and second half, on the first Monday in May, of each year, and that it was and is provided by Section 17 of said Chapter 103, that all taxes shall bear interest from the time of delinquency at the rate of ten per cent per annum until paid, and a fraction of a month shall be counted as a whole month, and that it was and is further provided by Section 18 of said Chapter 103, that all real property upon which the taxes, including personal property taxes secured thereby are unpaid and delinquent, shall be subject to sale as in said chapter provided.

XXX.

That by virtue of the foregoing provisions of the statutes of the state of Arizona, the taxes levied and assessed upon plaintiff's shares of stock for the year 1935 in the manner aforesaid, whether legal or illegal, became payable on or before the fourth day of November, 1935.

Plaintiff in the year 1935, and at all times since, has owned and held real estate in all of the counties which are parties defendant to this suit, except Yavapai County. [53]

That many of the owners and holders of plaintiff's shares of stock owned and held during the year 1935, and now own and hold real estate in one or more of said counties, and that the aforesaid illegal taxes are an apparent lien or cloud upon the real estate owned by the plaintiff in the respective counties and upon the real estate of

the shareholders of the plaintiff in the respective counties as well as upon said shares of stock and that said shares of stock on said 4th day of November, 1935, became subject to seizure and sale for said taxes in the manner provided by the Statutes of Arizona above set forth. That by reason of the statutes above mentioned, plaintiff could not with safety to itself permit the transfer of shares of its stock on its books or pay dividends to its shareholders on its shares of stock and if it refused to permit such transfers or refused to pay any such dividends on account of the non-payment of said taxes by said shareholders, it might subject itself to numerous suits brought by its shareholders to compel such transfers or to recover damages for refusing to make such transfers or to pay dividends.

That it was impossible for plaintiff to determine from the assessments made in Pima and Graham counties whether the taxes imposed in said counties were imposed solely on plaintiff's shares of common stock or upon both common and preferred shares and if plaintiff assumed that said taxes were imposed upon both classes of stock, it was imposible to apportion the same between the common and preferred shares. Hence, if plaintiff paid said taxes as demanded by the treasurers of said two counties it would not know to which class of its share-holders to charge said payment, or if it charged the same to both classes, it would not

know what amount to charge to each, and if it attempted to secure reimbursement by withholding payment of dividends or refusing transfers of shares, it would [54] subject itself to a separate suit for damages by each of its shareholders.

That plaintiff, finding itself involved in the difficulties above mentioned, filed its original Bill of Complaint in this court before the fourth day of November, 1935, and prayed for the issuance of a temporary injunction restraining the defendants from proceeding to collect the taxes complained of; that after said complaint was filed, a stipulation was entered into by and between the plaintiff and the several defendants by which it was stipulated and agreed that the several defendant county treasurers would accept the amount of taxes theretofore tendered by the plaintiff to each of them without prejudice to their right to collect the remainder at any future time and that the plaintiff might withdraw its application for temporary injunction and that the said defendants would refrain from proceeding to enforce collection of the taxes alleged by plaintiff to be illegal during the pendency of this suit, but that said defendants or any of them should have the right at any future time to proceed to collect said taxes in the manner they thought proper and that if they did so proceed, or threaten to proceed, plaintiff should have the right to renew its application for temporary injunction. That said stipulation expressly pro-

vided that the rights of any party to prosecute or defend this suit should not be prejudiced or affected in any way by said stipulation, or anything done in pursuance thereof except in so far as said stipulation expressly provided therefor. That said stipulation was approved by an Order regularly made and entered by the court.

That on or about the 10th day of April, 1939, the County Treasurer of Pima County gave notice to the plaintiff that he would proceed to collect all of the taxes assessed in his county against plaintiff's shares of stock for the year 1935, [55] including those alleged to be illegal by the plaintiff, as well as those admitted to be legal.

That plaintiff is informed and believes and upon such information and belief alleges that said County Treasurer will proceed to collect such taxes in the manner provided by law unless restrained by the order of this court, and that by reason of the aforesaid action of the County Treasurer of Pima county, all of the defendants now renew their threat to enforce collection of the taxes hereby sought to be enjoined. That those county officers made parties defendant hereto who have come into office since filing the original Bill of Complaint continue the threat of their predecessors to enforce collection of said taxes, and that by reason of the aforesaid threats, plaintiff now renews its application for temporary injunction.

XXXI.

That it was and is provided by Section 3065, Revised Code of Arizona for 1928, that a taxpayer dissatisfied with the amount of his assessment as reviewed by the State Board of Equalization may appeal from said assessment to the Superior Court of the county where the taxes are payable; that the remedy of such appeal was and is not available to the plaintiff to relieve it from the burden of the illegal taxes herein complained of, for the following reasons:

1. That said appeal is by said Section 3065 limited to a determination of the full cash value of the property assessed, and does not give the party appealing the right to question the legality of the tax imposed or any part thereof.

2. That the judgment of the court on such appeal is by said Section 3065, limited to finding the full cash value of the property assessed and said judgment cannot provide for the elimination from the assessment of property illegally or wrong- [56] fully assessed.

3. That the valuations made by the county assessors of Pima and Graham counties sought to be reviewed herein by plaintiff, present an issue as to the proper division of the assets of plaintiff between each of said counties and the county of Maricopa, in which the principal office of plaintiff is situated, and that said issue cannot be considered or determined on such appeal.

That such appeal would have to be taken separately from the valuation made by each of the four counties to the Superior court of that county. The question of apportionment among said four counties would have to be determined separately in each of said counties without an opportunity for any county, except the one in whose Superior Court the particular suit was pending, to be heard on said question, with the result that there would probably be four different decisions and four different appeals to the Supreme Court, all of which would have to be determined without opportunity for the several counties to directly contest their respective contentions.

4. That no such appeal can be taken unless the appellant first pays to the said county treasurer the amount of taxes levied against his property, and unless so paid the appeal must be dismissed by the court, and there is no provision for the county treasurer withholding the disbursements of the money paid by appellant until the determination of said appeal and the judgment on the appeal, if in favor of the appellant, can only be a judgment against the county for the amount of the excess taxes paid and such judgment will be of little value to the plaintiff for the reasons hereinafter set forth.

5. That said appeal lies only to the Superior Court of the county in which the tax is assessed and is not available in a Federal Court; that such appeal is a judicial and not an [57] administrative remedy and plaintiff, under the constitution and

laws of the United States, is not obliged to resort thereto but may bring its action in a Federal Court of Equity.

XXXII.

That it was and is provided by Section 55 of Chapter 103 of Arizona Session Laws for 1931, that no person upon whom a tax has been imposed under any law relating to taxation shall be permitted to test the validity thereof either as plaintiff or defendant, unless such taxes shall first have been paid to the proper county treasurer together with all penalties thereon and that no injunction shall ever issue in any county or proceeding in any court against the state or against any county, municipality or officer thereof, to prevent or enjoin the collection of any tax levied.

That it was and is provided by the aforesaid Section 55, that after payment of taxes an action may be maintained to recover any tax illegally collected, and if the tax due shall be determined to be less than the amount paid, the excess shall be refunded in the manner "hereinbefore provided", but that said Chapter 103, Arizona Session Laws of 1931, wholly fails to provide in what manner said refund may be made.

That it was and is provided by Section 876 of the Revised Code of Arizona for 1928, that the treasurers of the several counties shall transmit to the state treasurer all money in the county treasury belonging to the state, or collected for it within ten

days after receipt of a letter from the State Treasurer to that effect.

That it was and is provided by Section 3107, Revised Code of Arizona for 1928, that the county treasurer shall pay to the treasurer of each City or Town in his county, on the first day of each month in each year, all money in his hands collected for the previous month on taxes for said city or town. [58]

That it was and is provided by Section 1029, Revised Code of Arizona for 1928, that the county treasurer shall receive and hold as a special fund all school moneys, and keep a separate account thereof, and when it is apportioned among the school districts, shall keep a separate account for each district, notify the County School Superintendent on the first of each calendar month of the amount of the county school fund and special district funds on hand in the treasury to the credit of such fund, and pay over on the warrants of the county school superintendent duly endorsed by the person entitled to receive the same, any or all such money.

That there is no provision in the laws of the state of Arizona requiring or permitting county treasurers to withhold from apportionment or distribution to the state or city or towns, or school districts, or other legal subdivisions therein, any tax money paid to them under protest or as a condition precedent to the appeal provided by Section 3065, Revised Code of Arizona for 1928, from the valuation fixed by the State Board of Equalization.

XXXIII.

That at the time of the filing of the original complaint in this cause there was no controlling decision by the courts of Arizona determining the nature of the judgment that should be rendered in a case to recover taxes paid under protest, under the provisions of Section 35 of Chapter 103, Arizona Session Laws of 1931. Plaintiff alleged in the original complaint that it might be held by the courts of Arizona that separate actions would be required to be brought against the county and the state and school districts, and the municipalities to which the taxes sought to be recovered had been distributed, and that if it were so held, it would be impracticable for plaintiff to pay the taxes and sue to recover the amount paid from the various [59] counties, school districts and municipalities, on account of the *municiplicity* of suits that would be required to be brought in such event. That since the filing of the original complaint in this cause, on or about the 10th day of October, 1935, the Supreme Court of Arizona construed Section 55 of Chapter 103 of the Session Laws of 1931 so as to give a taxpayer who had paid taxes under protest and sued to recover the same, an ordinary judgment against the county into whose treasury the money was paid by the taxpayer. Said court construed said Section 55 as not creating a trust fund of the tax moneys paid under protest, and as not requiring the county treasurer to withhold distribution of said tax moneys so paid under protest, and as not requiring said county treasurer to re-

fund the particular moneys paid to him, and further interpreted said Section 55 with other sections construed together therewith as giving to the taxpayer who had paid his taxes under protest merely the right to an ordinary judgment against the county on an equality with other general obligations of the county. As thus construed, said Section 55 gives to the taxpayer paying taxes under protest, if the taxes are shown to have been illegal, a judgment against the county, which it is the duty of the Board of Supervisors of the county to pay out of funds in the county treasury not otherwise apportioned, or, if there are no such funds, it becomes the duty of the Board of Supervisors to budget the judgment as a county expense and levy a tax to pay it. That the remedy as thus given to the taxpayer who pays illegal taxes under protest is wholly inadequate for the reason that if the plaintiff in this suit should pay the illegal taxes herein complained of under protest, and should sue to recover the same and obtain a judgment against the respective counties, it would be unable to realize on said judgments for the reason that there are no funds in the treasuries of the said counties not otherwise appropriat- [60] ed which can be applied to the payment of said judgments, and that the duty imposed upon the Board of Supervisors to include such judgments in the budget can be exercised only at the time provided by law for the making of the budget, to-wit, on or about the first Monday in August of each year. That provision for said budget is made

by Sections 3097 and 3098, Revised Code of Arizona for 1928, and by such sections, and by Sections 3093 and 3094, Revised Code of Arizona for 1928, providing for the levy of taxes, no allowance is made for delinquencies in collection, so that if the plaintiff should recover judgments for taxes paid under protest, against the several counties that are parties defendant to this suit, by virtue of the sections of the statute aforesaid, a levy would be made only for the amount of such judgments, without any allowance whatsoever for delinquencies in the collection of taxes.

That by reason of the existing financial depression, and the difficulty of collecting taxes in all of the counties which are parties defendant to this suit, a large percentage of the taxes levied becomes delinquent and remains uncollected for a period of years, and a large percentage of the taxes hereafter levied will become delinquent and remain uncollected for a period of years.

That plaintiff is advised and believes, and upon such information and belief alleges that in Maricopa County, in which the largest amount of illegal taxes which plaintiff seeks to enjoin are claimed to be payable, the percentage of unpaid taxes amounts to more than twenty-five per cent; and that in all probability such percentage of delinquency will continue for a number of years to amount to more than twenty-five per cent, and that by the provisions of Section 33, Chapter 103, of the Arizona Session

Laws of 1931, the proceeds of such delinquent taxes, when collected, are required to be distributed for the [61] purposes for which they were originally levied, (exclusive of penalties, which go to the general fund of the county) and the statutes of the state of Arizona make no provision for a further levy to cover delinquencies in collection of the original levy, and that for the last four sessions the legislature of the state of Arizona, has passed laws to a large extent remitting penalties on delinquent taxes. That it is provided by said Chapter 103, Session Laws of Arizona for 1931, that real property subject to the lien for taxes thereon, or for taxes on personal property assessed to the same owner, may be sold and when so sold is subject to redemption for a period of three years. That the taxing officials in the several counties who are parties defendant to this suit owing to the large amount of delinquent taxes therein, permit a period of time as long as five years to elapse before making such sales, and in some of the counties in which plaintiff is assessed for taxes, no sales for taxes have been made for several years, notwithstanding delinquencies in the payment thereof, and that if and when such sales are made there are usually no purchasers for said real estate and the same is and will continue to be struck off to the state of Arizona, and no money will be collected on account of such sales until the expiration of the period of redemption, which is three years from the date of the sale, and

that by reason of said provisions of the statutes of Arizona, and the existing financial depression, if plaintiff should pay the illegal taxes assessed against its shares and sue to recover the same from the respective counties it would probably be more than a year from the date plaintiff obtained judgment before it would receive any payment on said judgment, and it would be many years before it would receive payment of more than two-thirds of said judgment, and in all probability a large percentage of said judgment would never be paid at all for the reason that the full [62] amount of the levy for said judgment would in all probability never be collected, and by reason of the acts of the legislature heretofore passed and which will probably be passed hereafter, waiving the collection of penalties on delinquent taxes, there probably never will be sufficient unappropriated money in the treasury of said counties to pay said judgments in full.

That the illegal taxes against which plaintiff seeks relief in this cause are required to be paid to four different county treasurers, and there is no provision under the laws of Arizona by which one action or proceeding may be brought against the four counties, and therefore plaintiff would in all events be required to bring at least four separate actions to recover illegal taxes paid by it under protest. That the duty enjoined by law upon the Board of Supervisors to include judgments for illegal taxes paid under protest in the budget, and

to make a levy for said judgments if neglected by said Board of Supervisors is enforcible only by mandamus. That if said Board of Supervisors in each of said counties should neglect to include the judgments that might be recovered by plaintiff in their budgets, plaintiff would be required to bring four separate actions in mandamus against said Boards of Supervisors, after having brought four separate actions to recover judgments.

That by reason of the foregoing facts, plaintiff has the right to resort to a federal court of equity to enjoin the collection of said illegal taxes, to avoid the necessity of bringing a multiplicity of suits.

XXXIV.

That as appears from paragraphs numbered XIII and XIV of this Second Amended and Supplemental Bill of Complaint, the assessments made or attempted to be made on plaintiff's shares of stock in Pima and Graham counties, are based upon a valuation [63] of the physical properties owned and held by plaintiff in said counties. That plaintiff is advised and believes, and upon such information and belief alleges that the taxing officials of said counties take the position and will assert in any proceeding to recover taxes assessed by them from plaintiff that under the provisions of Section 3071, Revised Code of Arizona for 1928, they have the right to value plaintiff's shares of stock at an amount not less than the actual cash value of the real and personal property of the plaintiff situated

in their respective counties, and that said defendants will attempt to justify the assessments made by them upon the real and personal property of the plaintiff in the said counties of Pima and Graham as being a valuation of the shares of stock of plaintiff, in an amount equal to the actual cash value of the real and personal property of the plaintiff situated in said counties, and that said taxing officials will assert in this suit, and will assert in any suit involving the collection of taxes from plaintiff for said counties, that the valuation of plaintiff's shares of preferred stock must be apportioned to Maricopa County, the county in which plaintiff's principal banking house is situated, and that the taxing officials of Maricopa County do assert, and will assert in this suit, or in any suit involving the collection of the taxes imposed by them upon the plaintiff that a proper proportion of plaintiff's shares of preferred stock must be apportioned to the several counties in which the plaintiff has branches, and that if the plaintiff should pay the taxes assessed against it in the several counties involved in this suit, and should seek to recover that portion of the taxes imposed on account of its preferred stock by separate suits against each of the several county treasurers of said counties, the defense will be made to the suits filed to recover the excessive amount of said taxes in Pima and Graham counties [64] that there was an improper apportionment of the taxable valuation of plaintiff's property as between

Maricopa County and each of said counties of Pima and Graham an issue which could not be determined in separate suits to recover the taxes paid, nor in any suit except a proceeding in equity to which the taxing officials of said counties of Maricopa, Pima and Graham are made parties.

That subsequent to the filing of the original complaint in this cause, at the time fixed by law for assessing taxes for the year 1937, the taxing officials of the several counties, parties hereto, and of other counties in the State of Arizona in which plaintiff has branches, assessed taxes for the year 1937 upon plaintiff's shares of stock; that all of such assessments were reviewed at the proper time by the State Board of Equalization; that said Board eliminated all values represented by plaintiff's preferred stock from such assessments for said 1937 taxes, except that in the case of Pima County the assessment was again made for an amount equal to the full value of the tangible, real and personal property owned by the plaintiff and situated in that county, said Pima county thus again assessing values represented by plaintiff's preferred stock owned and held by Reconstruction Finance Corporation, and said State Board of Equalization thus again declined to eliminate said values from said assessment and said Pima county imposed a tax of approximately $11,400.00 on values represented by plaintiff's preferred stock owned and held by Reconstruction Finance Corporation. Plaintiff did not

appeal from the action of said Board of Equalization under Section 3065, Revised Code of Arizona for 1928, but paid the full tax assessed, under protest, and sued to recover said sum of $11,400.00 from Pima county, or, in the alternative, if Pima county's method of assessment should be found correct by the [65] court, to recover said sum pro rata from the other counties to which it was paid.

The trial court held that the plaintiff's exclusive remedy provided by the State Law was by appeal to the Superior Court of the county, under Section 3065, Revised Code of 1928, and that plaintiff had no remedy to pay the tax under protest and recover the same under Section 55, Chapter 103, Session Laws of 1931; that there is no decision by the Supreme Court of Arizona authoritatively passing upon the question. Said Supreme Court has once said by way of dictum that the remedy provided by Section 55, Chapter 103, Session Laws of 1931, is available only when the tax is assessed under an unconstitutional law, and again it has said by way of dictum that the remedy provided by Section 55, Chapter 103 Session Laws of 1931, is available whenever no other remedy is provided by law. There being conflicting declarations by it, said Supreme Court does not consider itself bound by either expression and deems the question wholly open for future decision.

XXXV.

That by reason of the foregoing facts, plaintiff has no adequate remedy by payment of the illegal

taxes, and suing to recover the same, and is entitled to maintain this suit in equity for the purpose of preventing a multiplicity of suits, and to obtain an adjudication of the proper apportionment of taxes between the several counties parties hereto.

XXXVI.

That by reason of the provisions in the statute of the state of Arizona hereinbefore alleged, prohibiting the issuance of an injunction to prevent the collection of illegal taxes, plaintiff is without remedy in the courts of the state of Arizona, and has no remedy except in the United States District Court for the District of Arizona. [66]

XXXVII.

That the plaintiff has exhausted all administrative remedies available to it under the statutes and laws of the state of Arizona.

XXXVIII.

That by reason of all the matters and things hereinbefore alleged, plaintiff, unless granted the relief herein prayed for, will suffer great and irreparable damage and injury, and will be subjected to a multiplicity of suits, and has no plain or adequate remedy at law.

XXXIX.

That at the time of the filing of the original complaint in this cause, plaintiff was advised by its counsel and believed in good faith that the consti-

tution and laws of the United States secured to plaintiff and its shareholders immunity from taxation by or under the authority of the state on its shares of preferred stock hereinbefore described, and on the assets represented by said preferred stock, said assets being acquired by and from the money paid to it by the Reconstruction Finance Corporation of the United States of America, as the purchase price of said preferred stock, and that in said original complaint plaintiff, on behalf of itself and as the agent and trustee of its shareholders, expressly claimed such immunity.

That plaintiff in said original complaint further claimed immunity from such taxation under the exemption granted to said property by Section 2 of Article IX of the Arizona Constitution hereinbefore set forth, and likewise claimed that the taxes sought to be enjoined by it in said original complaint were illegal and void, because of discrimination against it made by the assessing officers in violation of the Constitution of Arizona, and the Act of Congress permitting and limiting the taxation of shares of stock of national banks. [67]

That after the filing of the original Bill of Complaint in this cause, to-wit, on or about the 3rd day of February, 1936, the Supreme Court of the United States determined and decided that the immunity from taxation under the Constitution and laws of the United States of the shares of preferred stock of National banks held by the Reconstruction Finance Corporation, had been waived by the Con-

gress of the United States giving its consent to the taxation of shares of stock of national banks.

That while said original complaint remained pending on plaintiff's claim of the exemption of the taxes sought to be enjoined under Section 2 of Article IX of the State Constitution, and plaintiff's claim of discriminatory assessment violating the Constitution of the State of Arizona, and plaintiff's claim of the violation of the Acts of Congress permitting and limiting the assessment of shares of stock of national banks on or about the 20th day of March, 1936, the Congress of the United States passed an act which was signed by the President on the same day, expressly declaring that preferred stock of national banks held by the Reconstruction Finance Corporation of the United States, should be exempt from all taxes, whether theretofore or thereafter assessed or levied. That the major portion of the taxes, the collection of which the plaintiff seeks to enjoin in this case, falls clearly within the terms of said last mentioned Act of Congress as taxes theretofore assessed and levied, and which have not been paid. That the Reconstruction Finance Corporation, the holder of the shares of preferred stock of the plaintiff against which the major portion of the taxes herein sought to be enjoined has been levied, immediately gave notice to the plaintiff to refuse payment of all taxes heretofore or hereafter assessed or levied against the preferred stock of the plaintiff owned and held by the Re-

construction Finance Corporation. That the whole [68] of the $1,240,000.00 par value of the shares of stock attempted to be assessed for taxes as hereinbefore alleged, is and at all times hereinafter mentioned has been owned by said Reconstruction Finance Corporation. That under the provisions of Sections 3069 and 3070, of the Revised Code of Arizona, and also under the decision of the Supreme Court of the United States, made February 3, 1936, the major portion of the illegal taxes, the collection of which is sought to be enjoined in this case, is levied and assessed upon the shares of preferred stock of the plaintiff owned and held by the Reconstruction Finance Corporation, and is payable only by the plaintiff as the statutory agent for such preferred shareholder, and if plaintiff pays such taxes, the same cannot be deducted from its general assets, nor can the same be deducted from the dividends to its common shareholders, but under the said Sections 3069 and 3070, of the Revised Code of 1928, the same are required to be deducted from the dividends on the preferred stock of the Reconstruction Finance Corporation.

That under the provisions of the Act of Congress, which became a law on March 20, 1936, the Reconstruction Finance Corporation is precluded from permitting the plaintiff to deduct said taxes from the dividends payable on the preferred stock held by it.

That the plaintiff is informed and believes, and upon such information and belief states that the waiver

of the exemption from taxation of the property owned and held by an instrumentality of the United States, such as the Reconstruction Finance Corporation, is within the control of congress and can be granted or withheld at the pleasure of congress, and that when the privilege theretofore extended to the several states and the counties and municipalities thereof to tax such shares of preferred stock owned and held by such instrumentality of [69] the United States was withdrawn by congress as to all taxes, whether theretofore or thereafter levied or assessed, the effect of the withdrawal of such privilege was to prevent and preclude absolutely the payment of any such taxes by the Reconstruction Finance Corporation, and that plaintiff is further informed and believes, and upon such information and belief states that said Act of Congress is valid, both as to taxes hereafter to be levied and assessed and taxes heretofore levied and assessed, and that if plaintiff is required to pay said taxes to the respective counties which are parties defendant hereto as the agent of the Reconstruction Finance Corporation, as its preferred shareholder, it will be unable to reimburse itself for such payment from the Reconstruction Finance Corporation, and that by reason of the foregoing facts the collection of said taxes on its preferred shares of stock will compel the plaintiff to pay out of its own funds, taxes assessed against the property of another in contravention of the due process clause of the constitu-

tion of the United States and the constitution of the state of Arizona, and that plaintiff herein and hereby expressly claims the right, privilege and immunity under the constitution and laws of the United States, of not being subjected to the payment of such taxes of its preferred shareholder, which it will be unable to collect from such shareholder.

Wherefore, plainitff prays:

1. That the assessment of plaintiff's said shares of stock, and the assessment of property owned and held by the plaintiff, made by the county assessors of the several counties parties hereto, for the purpose of state, county, school district and other local taxation, (except City of Phoenix taxes) for the years 1935, as aforesaid, be decreed to be illegal and void and without any force or effect whatsoever, and to be in [70] violation and contravention of the constitution and laws of the United States and the constitution and laws of the State of Arizona.

2. That the said taxes so levied and assessed upon plaintiff's said shares of stock, or upon property owned and held by the plaintiff for the year 1935, for state, county, school district and other local taxation, (except city of Phoenix taxes) set forth, be decreed to be wholly illegal and void. That any taxes which may hereafter be levied or assessed upon plaintiff's shares for said purposes for the year 1935, and based and computed upon said illegal and void assessment, likewise be decreed to be wholly illegal and void.

3. That the apparent lien resulting, and any apparent lien which may hereafter result from the levy and assessment of said taxes on plaintiff's said shares of stock, or on property owned and held by the plaintiff as aforesaid, be decreed to be wholly illegal and void, and without any force or effect whatsoever.

4. That the respective county treasurers, defendants herein, be directed to receive and accept from the plaintiff the respective sums of money heretofore offered and tendered to them, or such other sums as the court may find to be justly due and owing from the plaintiff and its shareholders to said county treasurers for taxes for the year 1935, levied or assessed against plaintiff's said shares of stock, or property owned and held by the plaintiff for state, county, school district and local taxes, for the year 1935, in full satisfaction as and for taxes levied and assessed for said purposes against plaintiff's said shares of stock for the year 1935.

5. That it be adjudged and decreed that plaintiff's shares of preferred stock, and property of the plainitff represented thereby, is wholly immune and exempt from taxation by [71] or under the authority of the State of Arizona, so long as said shares of preferred stock are owned and held by the Reconstruction Finance Corporation of the United States of America.

6. That if this court should be of the opinion that the Act of Congress adopted March 20, 1936,

withdrawing the privilege of taxing shares of preferred stock of national banks owned and held by the Reconstruction Finance Corporation from the several states, cannot be given effect as against taxes levied and assessed prior to the adoption of said Act, that in that event this court order and decree that until it be adjudged and determined by the court of last resort that said taxes against the shares of preferred stock held by the Reconstruction Finance Corporation are collectible from said corporation, plaintiff be protected against the collection thereof by the respective county treasurers who are parties to this suit, upon the ground that to compel the plaintiff to pay the obligation of another, when its right to reimburse itself for the payment from the true debtor is doubtful, will be to deprive the plaintiff of its property without due process of law, and that on said ground the collection of said taxes be enjoined until the proper construction and effect of said Act of Congress be finally determined.

7. That a temporary and interlocutory injunction issue out of and under the seal of this court, directed to the defendants, and each of them, commanding them and each of them, and each of their deputies, assistants, agents, servants, employees, attorneys, and successors in office, to desist from collecting or attempting to collect the whole or any part of said illegal and void taxes so levied or assessed, or which hereafter may be levied or assessed upon plaintiff's shares of stock, or upon property

owned and held by the plaintiff for the year 1935, as aforesaid, or any penalty or interest thereon, [72] either by distraint or sale, or by suit or sale, or issuance of delinquent tax certificates or otherwise, and to desist from instituting, conducting or causing to be instituted or conducted, any proceedings to enforce the payment of the whole or any part of said illegal or void taxes, or of said penalties, charges or interest, or to enforce or foreclose any apparent lien resulting from the levy and assessment of said taxes as aforesaid, or from advertising or offering plaintiff's said shares, or any part thereof, for sale for the purpose of collecting or attempting to collect said taxes, penalties, charges or interest, or from issuing or delivering any tax certificate or certificates to any pretended purchaser or purchasers of said property, or any part thereof, or otherwise, by reason of or resulting from said illegal or void taxes so levied or to be levied as aforesaid, and from assessing or pretending to assess or to approve the assessment of plaintiff's said shares for the purpose of state, county, school district and other local taxation in the year 1935, or in any similar manner, or any similar method, and from levying or assessing upon or against plaintiff's said shares in the year 1935, or in any succeeding year, any tax or taxes based or computed upon any such pretended assessment, and from collecting or attempting to collect any such taxes, said temporary or interlocutory injunction to remain in full force and effect until the final hearing of this

cause; that upon said hearing, said injunction be made permanent.

8. That plaintiff have such other and further relief as the nature of the case may require, and as to the court may seem meet and equitable, and also a decree for its costs herein.

J. L. GUST
CHARLES W. RAWLINS
GUST, ROSENFELD, DIVELBESS,
ROBINETTE & COOLIDGE
RAWLINS & RAWLINS
Solicitors for Plaintiff [73]

State of Arizona,
County of Maricopa—ss.

J. L. Gust, being first duly sworn on oath deposes and says:

That he is one of the attorneys for The Valley National Bank, of Phoenix, a corporation, the plaintiff named in the above and foregoing Second Amended and Supplemental Bill of Complaint, and is duly authorized to make this verification on behalf of said plaintiff;

That he has read said complaint, and that the allegations therein contained are true of his own knowledge, except such allegations as are made upon information and belief, and those allegations he believes to be true.

J. L. GUST

Subscribed and sworn to before me this 24th day of April, 1939.

(Seal) ETHOL FROST
Notary Public

My commission expires Feb. 27, 1940.
(Notarial Seal)

[Endorsed]: Received a copy of within this 24 day of April, 1939. Leslie C. Hardy, Attorneys for Defts. Maricopa County etc. Allan K. Perry for Tax Commission.

[Endorsed]: Filed Apr. 24, 1939. Edward W. Scruggs, Clerk United States District Court for the District of Arizona. By Helen Stroup, Deputy Clerk. [74]

[Title of District Court and Cause—E-350.]

ORDER GRANTING LEAVE TO FILE AMENDED AND SUPPLEMENTAL COMPLAINT

Application having been made to this court for leave to file an amended and supplemental complaint, accompanied by a copy of said proposed amended pleading, leave is hereby granted to plaintiff to file said amended and supplemental complaint and the same is hereby directed to be filed with the clerk forthwith;

And, it appearing that certain of the county officials who are named as parties defendant to the original complaint have ceased to hold office and

that by the amended and supplemental complaint their successors are made parties defendant, it is ordered that said successor defendants be allowed fifteen (15) days from the date of notice of their said substitution as parties defendant to object thereto.

Dated this 24 day of April, 1939.

DAVE W. LING
Judge [75]

[Title of District Court and Cause—No. 350.]

AMENDED AND SUPPLEMENTAL BILL OF COMPLAINT

(For Injunction Against Collection of Taxes)

[76]

Comes now the above named plaintiff, and for its Amended and Supplemental Bill of Complaint against the above named defendants, alleges:

I.

That plaintiff is, and was at all times herein mentioned, a corporation, duly incorporated as a national banking association under the laws of the United States of America, and authorized to do a banking business in the State of Arizona, having its principal banking house at Phoenix, Maricopa County, Arizona, and branches in other cities and towns in the County of Maricopa, and in cities and towns in the counties of Pima, Graham, Mohave, Gila, Greenlee, Pinal and Yavapai.

Plaintiff brings this suit in its own behalf and in behalf and as the agent of the holders of its common stock.

That the defendants, Maricopa County, Pima County, Graham [77] County, Yavapai County, and Gila County, each are and at all times herein mentioned, were duly organized and existing counties of the State of Arizona, and political subdivisions of said state;

That Harry M. Moore is a citizen and resident of Maricopa County, Arizona, and at the time of the filing of the original complaint in this cause, was the duly elected, qualified and acting County Treasurer and Ex Officio Tax Collector of said county; that since the filing of said original complaint he has been succeeded in said office by Ed. Oglesby, a citizen and resident of said Maricopa County, and that said Ed. Oglesby is now the duly elected, qualified and acting County Treasurer and Ex Officio Tax Collector of Maricopa County, and is sued herein as such officer, having been duly substituted as a party defendant in place of the said Harry M. Moore;

That the defendant, J. D. Brush, is a citizen and resident of Maricopa County, Arizona, and is the duly elected, qualified and acting County Assessor of said County, and is sued herein as such officer;

That the defendants C. W. Peterson, John A. Foote and Geo. Frye, are citizens and residents of Maricopa County, Arizona, and are now and at all times herein mentioned were the duly elected, quali-

fied and acting members of and have constituted and do now constitute the Board of Supervisors of said Maricopa County and the County Board of Equalization of said county;

That Daniel E. Garvey is a citizen and resident of Pima County, Arizona, and at the time of the filing of the original complaint in this cause, was the duly elected, qualified and acting County Treasurer and Ex Officio Tax Collector of said County; that since the filing of said original complaint, Wallace Bransford, a citizen and resident of Pima [78] County, Arizona, has succeeded said Daniel E. Garvey as County Treasurer and Ex Officio Tax Collector of said county, and is sued herein as such officer, having been legally substituted as a party defendant in said cause in place of the said Daniel E. Garvey;

That the defendant Charles M. Taylor, is a citizen and resident of Pima County, Arizona, and is the duly elected, qualified and acting County Assessor of said county, and is sued herein as such officer.

That Warren A. Grossetta, R. H. Martin and J. B. Mead, are citizens and residents of Pima County, Arizona, and at the time of the filing of the original complaint in this cause, were the duly elected, qualified and acting members of the Board of Supervisors of said Pima County and the Board of Equalization of said county;

That since the filing of the original complaint in this cause, Thomas Collins, a citizen and resident

of Pima County, Arizona, has been duly elected a member of the Board of Supervisors of Pima County, Arizona, to succeed Warren A. Grossetta, and that said Thomas Collins, R. H. Martin and J. B. Mead do now constitute the Board of Supervisors of Pima County, Arizona, and are sued herein as such officers, the said Thomas Collins having been substituted as a party defendant in place of Warren A. Grossetta;

That Charles M. Geitz was a citizen and resident of Graham County, Arizona, and was the duly elected, qualified and acting County Treasurer and Ex-Officio Tax Collector of said county at the time of the filing of the original complaint in this cause; that since the filing of the original complaint in this cause Earl M. Lines has succeeded the said Charles M. Geitz as the duly elected, qualified and acting County Treasurer and Ex Officio Tax Collector of said county and is sued herein [79] as such officer, having been substituted as a party defendant in place of said Charles M. Geitz.

That the defendant, Alvin Goodman, is a citizen and resident of Graham County, Arizona, and is the duly elected, qualified and acting County Assessor of said County, and is sued herein as such officer;

That J. W. Greenhalgh, Glen Hoopes and Virgil McEuen, are citizens and residents of Graham County, Arizona, and at the time of the filing of the original complaint in this cause, were the duly elected, qualified and acting members of and con-

stituted the Board of Supervisors of said Graham County, and the County Board of Equalization of said county;

That since the filing of the original complaint in this cause, Ernest D. Householder and M. E. Dubois, citizens and residents of Graham County, Arizona, have succeeded J. W. Greenhalgh and Virgil McEuen as members of the Board of Supervisors of said Graham County, and the said Glen Hoopes, Ernest D. Householder and M. E. Dubois now constitute the Board of Supervisors of said Graham County and the Board of Equalization of said County, and are sued herein as such officers, the said Ernest D. Householder and M. E. Dubois having been substituted as parties defendant in place of J. W. Greenhalgh and Virgil McEuen;

That David H. Biles was a citizen and resident of Yavapai County, Arizona, and the duly elected, qualified and acting County Treasurer and Ex Officio Tax Collector of said County at the time of the filing of the original complaint in said cause; that said David H. Biles has been succeeded as such County Treasurer and Ex Officio Tax Collector by Pearl Bethea, a citizen and resident of Yavapai County, Arizona, and that the said Pearl Bethea now is the duly elected, qualified and acting County Treasurer and Ex Officio Tax Collector of said county, [80] and is sued herein as such officer, having been substituted as a party defendant in place of David H. Biles;

That C. H. Riebeling was a citizen and resident of Yavapai County, Arizona, at the time of the

filing of the original complaint in this cause and was the duly elected, qualified and acting County Assessor of said County; that since the filing of the original complaint in this cause, David H. Biles, a citizen and resident of Yavapai County, Arizona, has succeeded C. H. Riebeling as County Assessor of Yavapai County, Arizona, and is sued herein as such officer, having been substituted as a party defendant in place of the said C. H. Riebeling;

That at the time of the filing of the original complaint in this cause, W. M. Byers, T. B. Jones and C. C. Jackson were citizens and residents of Yavapai County, Arizona, and were the duly elected, qualified and acting members of and constituted the Board of Supervisors of Yavapai County, Arizona; that since the filing of the original complaint in said cause, T. B. Jones was succeeded as a member of the said Board of Supervisors of Yavapai County by R. W. Wingfield, a citizen and resident of Yavapai County, Arizona; that said W. M. Byers, C. C. Jackson and R. W. Wingfield now constitute the duly elected, qualified and acting members of the Board of Supervisors of Yavapai County, Arizona, and are sued herein as such officers, the said R. W. Wingfield having been made a party defendant in place of T. B. Jones;

That at the time of the filing of the original complaint in this cause, Frank H. Thomas was a citizen and resident of Gila County, Arizona, and was the duly elected, qualified and acting County Treasurer and Ex Officio Tax Collector of said County; that

since the filing of the original complaint in this cause, E. S. Bryant, a citizen and resident of Gila County, Arizona, has succeeded the said Frank H. Thomas as the duly [81] elected, qualified and acting County Treasurer of Gila County, Arizona, and is sued herein as such officer, having been made a party defendant in place of the said Frank H. Thomas;

That the defendant, W. G. Duncan is a citizen and resident of Gila County, Arizona, and at all times herein mentioned was and is now the duly elected, qualified and acting County Assessor of said county, and is sued herein as such officer;

That the defendants, John H. Armer, Charles Curnow and L. F. Quinn, are citizens and residents of Gila County, Arizona, and are now and at all times herein mentioned were the duly elected, qualified and acting members of and have constituted and do now constitute the Board of Supervisors of said Gila County, and the County Board of Equalization of said County;

That the defendants, Frank Luke, Thad M. Moore and D. C. O'Neil, are residents of Maricopa County, Arizona, and are now and at all times herein mentioned have been the duly elected, qualified and acting members of and have constituted, and do now constitute the State Tax Commission and State Board of Equalization of the State of Arizona.

II.

That this is a suit of a civil nature, in equity, arising under the Constitution and laws of the

United States, and that the amount involved herein, exclusive of interest and costs, exceeds the sum or value of Three Thousand ($3,000.00) Dollars.

III.

That the plaintiff now exercises, and from and since the 11th day of February, 1935, has exercised in the City of Phoenix, and the Cities of Glendale and Mesa, in Maricopa County, Arizona, in the city of Tucson and the Town of Ajo, [82] in Pima County, Arizona, in the town of Safford, Graham County, Arizona, in the city of Kingman, Mohave County, Arizona, and in the cities of Globe and Miami, and town of Hayden, in Gila County, Arizona, in the town of Clifton, Greenlee County, Arizona, in the towns of Superior, Coolidge and Casa Grande, in Pima County, Arizona, and in the city of Prescott, Yavapai County, Arizona, normal banking powers conferred upon it by law as a national banking association; including the receiving of commercial deposits, demand and time savings deposits, evidenced by certificates of deposit, the purchase and sale of government, state and municipal bonds, the maintenance of a Trust Department, the purchase and discount of commercial paper, the loaning of money on financial statements, and upon collateral security, and upon real estate and chattel mortgages executed to the plaintiff or assigned to and deposited with it as collateral security, and the investment of money in notes, bonds and mortgages and other securities, and evidences of indebtedness.

IV.

That it was and is provided by Section 1, of Article IX of the Constitution of the State of Arizona, that all taxes shall be uniform upon the same class of property within the territorial limits of the authority levying the tax.

That it was and is provided by Section 3068, Revised Code of Arizona for 1928, that all taxable property within said state must be assessed at its full cash value, and that the term, "full cash value", shall mean the price at which property would sell if voluntarily offered for sale by the owner thereof upon such terms as such property is usually sold, and not the price that might be realized if such property were sold at a forced sale.

That it was and is provided by Section 3069, Revised [83] Code of Arizona for 1928, as amended by Chapter 110, Session Laws of Arizona for 1931, that the property of corporations shall be assessed and taxed, and no assessment shall be made on shares of stock of corporations, nor shall any holder thereof be taxed for such shares, but that said provisions with reference to the taxing of shares of stock shall not apply to banking corporations, building and loan associations or corporations, and corporations or associations engaged in the business of using money wherewith to make money for the owners of their shares, and that the shares of stock of such banking corporations, and other corporations and associations shall be assessed and taxed as other property in the name of the shareholders of the several shares

thereof, to be entered and taxed in the name of and be payable by such corporation or association.

V.

That it was and is provided by Section 11, of Article IX of the Constitution of Arizona, that the manner, method and mode of assessing, equalizing, and levying taxes in the State of Arizona, shall be such as may be prescribed by law.

That it was and is provided by Section 3074, Revised Code of Arizona, 1928, that between the first Monday in January, and the first day of May, of each year, the County Assessor, (except as otherwise required by the State Tax Commission) shall ascertain by diligent inquiry and examination all property in his county subject to taxation, the names of all persons owning, claiming, or having possession or control thereof, determine the full cash value of all such property, and list and assess the same to the person owning, claiming or having the possession, charge, or control thereof.

That it was and is provided by Section 3070, Revised Code of Arizona for 1928, that upon the demand of the Assessor the officers in charge of any banking corporation or association [84] engaged in the business of using money wherewith to make money, shall make out and deliver to said assessor a sworn statement showing the number of shares, the name and residence of each shareholder, and the number of shares owned by him, the surplus, reserve fund and undivided profits, and the par and

market value of the shares, and that the full cash value of such shares shall be ascertained according to the best information which the assessor may be able to obtain, whether from any return to any officer of the state or the United States, from actual sales of the stock; or from other trustworthy sources, and that every such shareholder shall, where such corporation or association is located, render at their full cash value to the assessor all shares owned by him therein, and if the shareholder fail to do so the assessor shall list and assess such unrendered shares as other unrendered property, and that the taxes due thereon shall be paid by such corporation or association, and shall be a lien against and assessed to such shares of stock, and no such corporation or association shall pay any dividends to any shareholder who is in default in the payment of taxes due on his shares, nor shall it permit the transfer on its books of any shares the owner of which is in default in the payment of his taxes on the same.

That it was and is provided by Section 3071, Revised Code of Arizona for 1928, that every such corporation or association for the purpose of said assessment shall be considered as located in every county, city or town wherein it has an office for the purpose of carrying on its business, and the shares shall be subject to taxation in any county, city or town wherein it has such office, that the officer of such corporation or association shall state in his statement if his association or corporation is

subject to taxation in more than one county, city or town, and the proportion of its assets [85] situated in each thereof, and that the shares of such corporation or association shall be taxed in each county, city or town, for only such portion of their value as the assets situated in that county, city or town bear to the assets of the entire corporation or association, and that when a bank maintains branches or conducts business in more than one county, city or town, the assessed value of the capital stock shall be apportioned among the several counties, cities and towns in which the main office or such branches are maintained or business conducted, and the amount apportioned to each county, city or town shall not be less than the actual cash value of the real and personal property of such bank situated in such county, city or town.

VI.

That on the 11th day of February, 1935, the day plaintiff engaged in the banking business as a national bank, the amount of its common capital stock was $260,000.00, its surplus was $260,000.00, its undivided profits were $90,026.52, making a total as a basis for the valuation of its shares of common stock of $610,026.52. That its common capital stock consisted of 52,000 shares, of the par value of $5.00 each. That to provide the plaintiff with sufficient capital to enable it to comply with the laws and regulations pertaining to national banks in the acquisition and transaction of the banking business

which it acquired on said 11th day of February, 1935, the Reconstruction Finance Corporation of the United States of America purchased from the plaintiff, and the plaintiff sold to said Reconstruction Finance Corporation, $1,240,000.00 par value of its preferred stock. That said preferred stock so issued and sold to said Reconstruction Finance Corporation consisted of 198,400 shares of the par value of $6.25 each, and that all of said preferred stock was issued to said [86] Reconstruction Finance Corporation on or prior to said 11th day of February, 1935, and ever since the issuance thereof has been and now is owned and held by and is the property of the Reconstruction Finance Corporation of the United States of America.

VII.

That on the first day of January, 1936, the amount of the common capital stock of plaintiff was $260,000.00, its surplus was $260,000.00, and its undivided profits were $101,367.14, making a total as the basis for the valuation of its common stock of $621,367.14. That on said date its common capital stock consisted of 52,000 shares of the par value of $5.00 each, and that the amount of its capital stock, surplus, and undivided profits, and the valuation of its shares of common stock, and the number of said shares remained substantially the same as it was on the first day of January, 1936, until after the first Monday in May, 1936.

VIII.

That on or about the 24th day of March, 1936, and prior to the first day of May, 1936, an officer of the plaintiff, duly authorized for said purpose, made and delivered a statement such as is provided for by Sections 3070 and 3071, Revised Code of Arizona for 1928, to each of the assessors of the respective counties in which its main office, or any of its branches was situated, including all of the counties made parties defendant to this suit. That each of said statements showed the number of plaintiff's shares, the names and residences of each shareholder owning and holding the shares of its common stock, and the shares of its preferred stock above mentioned, the number of shares owned by each shareholder, the amount of capital, surplus and undivided profits as above stated, and the par value of its shares, both common and [87] preferred, as is required by Section 3071, Revised Code of Arizona for 1928. Each of said statements showed the proportion of plaintiff's assets situated in each of the counties in which its principal office or a branch thereof was situated. That said statement showed the common capital stock of the plaintiff was $260,000.00, that its surplus was $260,000.00, and that its undivided profits were $101,367.14, making a total as a basis for the valuation of its common capital stock of $621,367.14. That said statement also showed that the following percentages of said amount were properly apportioned to the respective counties as follows, to-wit: Maricopa County, 63.54

per cent. Pima County, 16.88 per cent, Graham County, 2.73 per cent, Yavapai County, 2.92 per cent, Gila County, 7.26 per cent, Pinal County, 2.90 per cent, Greenlee County, 1.86 per cent, Mohave County, 1.91 per cent.

IX.

That the tax statutes hereinabove set forth, as now in force in the state of Arizona, have been the governing tax laws of the state of Arizona for many years, and that for many years immediately prior to the year 1934, it was the universal practice followed by the County Assessors of the several counties of the state of Arizona, and approved by the Tax Commission of the state of Arizona, to value for tax purposes the shares of stock of each of the banks in the State of Arizona, at an aggregate amount equal to the capital stock, surplus and undivided profits of each of said banks, as shown by the books of said bank, and that in the year 1934, all or substantially all of the banks in the state of Arizona protested to the State Tax Commission of the state of Arizona, sitting as a State Board of Equalization, against the valuation of their shares of stock on said basis, for the reason that the same constituted an assessment of the capital stock of said [88] banks at its full cash value, when other classes of property in said state, in pursuance of a general understanding among the tax officials of the state were assessed at an amount equal to 60% of their cash value, and that in the consideration

of said protests, said State Tax Commission, sitting as a Board of Equalization, in the year 1934, made a thorough examination of the valuation of shares of bank stock in the state of Arizona, and after such examination ordered that shares of bank stock should be valued by the following method: (1) That the statements filed by said banks should be revised and corrected by the use of the best information available; (2) That the shares of stock should be valued at 75% of the capital stock, surplus and undivided profits as shown by said revision of the banks statement. That said Tax Commission made no determination with reference to the taxability of shares of preferred stock of banks owned and held by Reconstruction Finance Corporation, and expressly left that question to be determined by the courts.

X.

Plaintiff is informed and believes, and upon such information and belief states that the State Tax Commission of the state of Arizona, said State Tax Commission consisting of the same individuals as the State Board of Equalization, in the exercise of its supervisory powers over the County Assessors of the State of Arizona, directed and instructed the County Assessors of the several counties of the state of Arizona to value for tax purposes for the year 1935, the shares of stock of all banks in the state, by the method adopted by it in the year 1934, which is set forth in Paragraph IX hereof, and that the county assessors of the several counties

of the state, (except the County Assessor of Mohave county), in pursuance of said instructions of said State Tax Commission, valued for [89] tax purposes for the year 1935, the capital stock of all banks in their respective counties at an amount equal to 75% of the capital stock, surplus and undivided profits of said banks, as shown by the statements filed by said banks.

XI.

That plaintiff is informed and believes, and upon such information and belief states that the State Tax Commission of the state of Arizona, said Tax Commission consisting of the same individuals as the State Board of Equalization, who are parties defendant to this suit, issued no instructions to the several county assessors of the state as to the method by which shares of stock of banks should be valued in said year of 1936, and that as a result of the failure of said Tax Commission to issue such instructions, certain of the County Assessors valued bank stock in their respective counties substantially in accordance with the instructions issued by the Tax Commission in the year 1935; that is to say, at 75% of the amount of the capital stock, surplus and undivided profits of said banks, and others of said County Assessors valued the capital stock of the banks situated in their counties, at an amount equal to the full value of the capital stock, surplus and undivided profits of said banks, as shown by the books of said banks. That plaintiff is informed

and believes, and upon such information and belief states that the capital stock of no bank other than the plaintiff was valued for tax purposes for the year 1936 at an amount in excess of 75% of the capital stock, surplus and undivided profits of said bank, the counties in which the capital stock of the banks therein was valued at the full amount of the capital stock, surplus and undivided profits, in the year 1936, being counties in which no bank except the plaintiff was doing business, excepting Maricopa County, in which the valuation of the shares of stock of all [90] banks therein was reduced to 75% of the capital stock, surplus and undivided profits by the State Board of Equalization, as hereinafter set forth.

XII.

That in pursuance of a general plan and understanding among the taxing officials of the state of Arizona, including the members of the State Board of Equalization who are parties to this suit it has been the practice of the taxing officials of the state of Arizona for many years to assess property in the state of Arizona generally, at an amount equal to approximately 60% of its full cash value, and that said practice, in pursuance of said general plan and understanding among said taxing officials, was continued and followed in the year 1936, and was approved by the State Board of Equalization in the year 1936.

XIII.

That the county assessors of Greenlee, Mohave and Pinal counties valued the shares of common stock of the plaintiff for the year 1936, as personal property on a basis reasonably satisfactory to the plaintiff and its shareholders, and that the plaintiff paid said taxes as a personal property assessment, and that by reason of such payment the amount of taxes collectible from the plaintiff and its shareholders for 1936 taxes in said counties has been determined.

XIV.

That the County Assessor of Maricopa County, made his valuation of the plaintiff's shares of stock for tax purposes for the year 1936 in the manner following: He added together the amount of the common capital stock, surplus and undivided profits shown by the statement filed with him by plaintiff as aforesaid, and added to the amount so arrived at the sum of $1,240,000.00, being the par value of the preferred stock of [91] the plaintiff, issued to and owned and held by the Reconstruction Finance Corporation, as hereinbefore alleged, the total so arrived at being the sum of $1,861,367.14. Said County Assessor then took 63.54 per cent of said sum, (said 63.54 per cent being the percentage shown by the statement filed with him by the plaintiff as the percentage properly apportioned to Maricopa County) thus arriving at $1,182,712.68, as the amount apportioned to Maricopa County, which sum said assessor placed on the tax roll as the

assessable value of plaintiff's shares of stock for tax purposes for the year 1936, in said Maricopa County. That of the aforesaid valuation of $1,182,712.68, 63.54 per cent of the sum of $1,240,000.00, or $787,896.00 was and is the valuation placed by said County Assessor upon Maricopa County's proportion of the shares of preferred stock of the plaintiff, owned and held by the Reconstruction Finance Corporation.

XV.

That the County Assessor of Pima County valued the shares of stock of the plaintiff in his county in the year 1936 by placing a valuation on the several items of tangible real and personal property owned and held by the plaintiff in said county, and totaling said valuations of said items of real and personal property and taking said total as the actual cash value of that portion of the capital stock of the plaintiff assessable in Pima County. That the valuation so arrived at by said County Assessor of Pima County was and is $318,510.00.

That the assessment made by said assessor does not show whether said valuation was intended to be imposed upon plaintiff's common capital stock or upon plaintiff's preferred stock. If said valuation is construed as imposed upon plaintiff's common stock, it amounts to a valuation of that portion of plaintiff's shares of common stock assessible in Pima [92] county of $6.215 per share, which is the equivalent of a total valuation of plaintiff's shares of common stock in all counties of $36.78 per share.

That $400,000.00 worth of the $1,240,000.00 worth par value of plaintiff's preferred stock was purchased from plaintiff by Reconstruction Finance Corporation for the express purpose of enabling plaintiff to purchase the assets of Consolidated National Bank, a National Bank, doing business at Tucson, Pima County, Arizona. That said assets of said Consolidated National Bank were practically all situated in said Pima County, and were purchased by plaintiff in February, 1935. That among said assets were the banking furniture and equipment, and the banking house and office building owned by said Consolidated National Bank in the City of Tucson, which constitute practically all of the tangible real and personal property assessed, in the manner aforesaid as constituting the assessible value of plaintiff's shares of stock in Pima County.

XVI.

That the aforesaid valuation by the County Assessor of Pima county was excessive and illegal to the extent following: The total of the common capital stock of $260,000.00, the surplus of $260,000.00, and the undivided profits of $101,367.14, is $621,367.14, which represents the shares of common capital stock of the plaintiff. Of this amount, 16.88 per cent, or the sum of $104,886.77, is properly apportioned to Pima county, representing that portion of plaintiff's shares of common stock apportioned to Pima County. To make allowance for probable shrinkage in book assets and the normal difference

between the book value of the assets and the actual value of the shares of stock in accordance with the method prescribed by the State Tax Commission as aforesaid, one-fourth thereof, or the sum of $26,-221.69 must be deducted, leaving [93] the amount of $78,665.08, as the actual cash value for the year 1936, of that portion of plaintiff's shares of common stock which is assessable in Pima county. That the excess over said sum of $78,665.08 assessed against the shares of stock of plaintiff by the County Assessor of Pima county, which is the amount of $241,844.92, was assessed on account of values represented by plaintiff's preferred stock, owned and held by the Reconstruction Finance Corporation.

XVII.

That the County Assessor of Graham County valued the shares of stock of the plaintiff in his county in the year 1936 by placing a valuation on the several items of tangible real and personal property owned and held by the plaintiff in said county and totaling said valuation of said items of real and personal property, and taking said total as the actual cash value of that portion of the capital stock of the plaintiff assessable in Graham county. That the valuation so arrived at by said County Assessor of Graham County was and is $22,470.00. That the assessment made by said Assessor does not show whether said valuation was intended to be imposed upon plaintiff's common capital stock or upon plaintiff's preferred stock. If said valuation

is construed as imposed upon plaintiff's common stock, it amounts to a valuation of that portion of plaintiff's shares of common stock assessable in Graham County of $0.432 per share, which is the equivalent of a total valuation of plaintiff's shares of common stock in all counties of $15.83 per share. That $840,000.00 worth of the $1,240,000.00 worth par value of plaintiff's preferred stock was purchased from plaintiff by Reconstruction Finance Corporation for the express purpose of enabling plaintiff to pay off a debenture of $840,000.00 owed by The Valley Bank & Trust Company to Reconstruction Finance Corporation. Said The Valley Bank & Trust [94] Company was a state bank, having its principal place of business in Maricopa County, and branches in several other counties, including Graham County. That all of the assets of said bank were purchased by plaintiff in February, 1935, and said debenture of $840,000.00 was paid by plaintiff out of the proceeds of plaintiff's preferred stock sold to Reconstruction Finance Corporation. That the assets of the Graham county branch of said The Valley Bank & Trust Company were 4.427% of the total assets of said The Valley Bank & Trust Company, and the pro rata part of the Graham County branch of said debenture of $840,000.00 was 4.47% of said $840,000.00, or $37,186.80, so that said sum of $37,186.80 of the proceeds plaintiff received from the sale of its preferred stock to Reconstruction Finance Corporation went into said Graham County branch.

That the aforesaid valuation by said County Assessor of Graham county was and is excessive and illegal to the extent following: The total of the common capital stock of $260,000.00, the surplus of $260,000.00, and the undivided profits of $101,367.14, is $621,367.14, which represents the shares of common capital stock of the plaintiff. Of this amount, 2.73 per cent, or the sum of $16,963.32 is properly apportioned to Graham county, representing that portion of plaintiff's shares of common stock apportioned to Graham county.

From said sum must be deducted one-fourth thereof, or the sum of $4,240.83, to make allowance for probable shrinkage in book assets and the normal difference between the book value of the assets and the actual value of the shares of stock in accordance with the method prescribed by the State Tax Commission as aforesaid, leaving the amount of $12,722.49 as the true valuation for tax purposes for the [95] year 1936, of that portion of plaintiff's shares of common stock which is assessable in Graham county. That the valuation arrived at by the County Assessor of Graham county in excess of said sum of $12,722.49, said excess being $9,747.51, was assessed upon values represented by preferred stock of the plaintiff owned and held by the Reconstruction Finance Corporation."

XVIII.

That the County Assessor of Yavapai County made his valuation of plaintiff's shares of stock for

tax purposes for the year 1936 in the manner following: He added together the amount of the common capital stock, surplus and undivided profits shown by the statements filed with him by plaintiff as aforesaid, the total so arrived at being the sum of $621,367.14, which represents the common capital stock of the plaintiff. Said County Assessor then took 2.92 per cent of said sum, (said 2.92 per cent being the percentage shown by the statement filed with him by the plaintiff as the percentage properly apportioned to Yavapai County), thus arriving at $18,143.92 as the amount apportioned to Yavapai County, and then deducted one-fourth of said amount, leaving the sum of $13,607.94 as the assessable value of that portion of plaintiff's shares of common stock properly apportioned to Yavapai County.

That said valuation so made by the County Assessor of Yavapai County was satisfactory to plaintiff, and plaintiff made no objection thereto, either before the County Board of Equalization, or the State Board of Equalization.

XVIII.

That the County Assessor of Gila County made his valuation of plaintiff's shares of stock for tax purposes for the year 1936 in the manner following: He added together the amount of the common capital stock, surplus and undivided profits [96] shown by the statement filed with him by plaintiff as aforesaid, the amount so arrived at being the sum of

$621,367.14, which represents plaintiff's shares of common capital stock as shown by plaintiff's statement filed with said county assessor. Said county assessor then took approximately 7.26 per cent of said sum, (said 7.26 per cent being the percentage shown by the statement filed with him by the plaintiff as the percentage properly assessable to Gila county), thus arriving at $45,110.00 as the amount apportioned to Gila county, which sum said assessor placed on the tax roll as the assessable value of plaintiff's shares of stock for tax purposes for the year 1936 in said Gila County.

That said valuation so made by the county assessor of Gila county included no values attributable to preferred stock of the plaintiff, and was proper except that there should have been deducted from the sum of $45,110.00, as shown by the statement filed by plaintiff, one-fourth thereof, or the sum of $11,277.81, and leaving the sum of $33,833.44 as the actual cash value for tax purposes for the year 1936, of that portion of plaintiff's shares of common stock which is assessable in Gila county. That said deduction of one-fourth must be made as aforesaid in order to place the valuation of plaintiff's shares of stock on the same basis as the valuation of the shares of stock of other banks in the state of Arizona, which were all valued either by the county assessors or the State Board of Equalization, by the method prescribed by the State Tax Commission hereinabove set forth.

XIX.

That within the time provided by law, plaintiff filed a written protest against the foregoing valuations of its shares of stock herein complained of with the County Board of Equalization in each of the counties of Maricopa, Pima, Graham and [97] Gila, being all of the counties in which the valuations of its shares of stock are complained of herein, except Yavapai county, in which county the valuation made by the county assessor was satisfactory to the plaintiff, but was afterwards attempted to be increased by order of the State Board of Equalization as hereinafter set forth.

Plaintiff further, within the time provided by law, appeared before the County Board of Equalization in each of said counties in which it filed written protests as aforesaid, and urged the correction and reduction of said assessments in all respects herein complained of. That each of said County Boards of Equalization heard the plaintiff and refused and denied any relief to the plaintiff.

XX.

That none of the aforesaid County Boards of Equalization made any changes in the valuations made as aforesaid by the respective county assessors upon the shares of stock of the plaintiff and that the clerk of each of said boards of supervisors, immediately after the July adjournment of said Boards of Equalization, transmitted to the State Board of Equalization the respective valuations

made as aforesaid by the respective county assessors, which valuations were as follows, to-wit:

Maricopa County	$1,182,712.68
Pima County	318,510.00
Graham County	22,470.00
Yavapai County	19,607.94
Gila County	45,110.00

XXI.

That on or about the 5th day of August, 1936, the plaintiff filed a written protest with the defendants, Frank Luke, Thad M. Moore and D. C. O'Neil, sitting as a State Board of Equalization of the State of Arizona, protesting against the valuations of its shares of stock in Maricopa County, Pima [98] county, Graham county and Gila county, but making no protest whatsoever against the valuation of its shares of stock in Yavapai County; that said protests against the valuations in Maricopa county, Pima county, Graham county and Gila county, set forth all of the objections to said valuations hereinbefore set forth, and on said 5th day of August, 1936, the plaintiff appeared before said Frank Luke, Thad M. Moore and D. C. O'Neil, sitting as a State Board of Equalization, and urged the correction and reduction of said valuations of its shares of stock in Maricopa county, Pima county, Graham county and Gila county, in all respects herein complained of, but plaintiff made no objection, or urged no correction in the assessment of its shares of stock in Yavapai county; that said defendants, sitting as

a Board of Equalization, heard the plaintiff and took plaintiff's protest and objections under consideration, but did not advise plaintiff that they contemplated making any change whatsoever in the valuation placed upon plaintiff's shares of stock in Yavapai county.

XXII.

That thereafter, and within the time provided by law, the said State Board of Equalization, as a result of its consideration of the protest of the plaintiff and of the prptests of other banks situated in Maricopa county, ordered a reduction of 25% from the valuation of plaintiff's shares of stock in Maricopa county; that is to say, it reduced said valuation from $1,182,712.68 to $887,034.51. That the valuations of the shares of stock of all other banks in Maricopa county were reduced a like percentage by said State Board of Equalization.

XXIII.

That plaintiff is informed and believes, and upon such information and belief states, that said reduction of the valuations made by the county assessor of Maricopa county of [99] the shares of bank stock in said county, left no bank in the state of Arizona, except the plaintiff, with an assessment upon its shares of stock in excess of 75% of the capital stock, surplus and undivided profits as shown by the books of said bank. That said State Board of Equalization denied any relief to the plaintiff with reference to the valuations placed upon its preferred stock or values represented by

said preferred stock by the county assessor of Maricopa county, and denied all relief prayed by plaintiff with reference to the valuations placed upon its shares of stock in the counties of Pima, Graham and Gila, and left the valuations as made by the county assessors in said counties stand as hereinbefore set forth. That with respect to Yavapai county, said State Board of Equalization, in violation of Section 3063, Revised Code of 1928, without any notice whatsoever to plaintiff as provided by said Section, attempted to increase the assessed valuation of plaintiff's shares of stock in Yavapai county from the sum of $13,607.94, to the sum of $40,763.84, by attempting to add the sum of $27,155.90, as an assessment upon the preferred stock of the plaintiff held by the Reconstruction Finance Corporation. That said State Board of Equalization arrived at said amount of $27,155.90 by valuing plaintiff's shares of preferred stock at 75% of their par value, or $960,000.00, and apportioning 2.92%, (being the percentage of its assets apportioned to said county by plaintiff in its statement) of said sum to Yavapai County. That after the action of the State Board of Equalization upon the valuations of plaintiff's shares of stock, said valuations were as follows:

Maricopa County,	$887,034.51
Pima county,	318,510.00
Graham county,	22,470.00
Yavapai county,	40,763.84
Gila county,	45,110.00

Plaintiff alleges that the said State Board of Equaliza- [100] tion before fixing the above figures considered the valuation of the shares of capital stock for the year 1936 of substantially all banks in the State of Arizona, and fixed the valuation of the shares of stock of all of said banks except the plaintiff at an amount equal to 75% of their capital stock, surplus and undivided profits; that in the case of the plaintiff it declined to fix the valuation of plaintiff's shares of stock on the same basis for the reason that the plaintiff had issued preferred stock, owned and held by the Reconstruction Finance Corporation, and that said State Board of Equalization fixed, or allowed to stand as they had been fixed by the Tax Assessors, the valuations herein shown in excess of 75% of plaintiff's common capital stock, surplus and undivided profits, solely by reason of the fact that it determined that plaintiff ought not to escape taxation on its shares of preferred stock, and that solely by reason of the existence of such preferred stock said State Board of Equalization added the excess amounts above stated to 75% of the common capital stock, surplus and undivided profits as shown by plaintiff's statement, with the object and purpose of requiring plaintiff to pay a tax upon valuations represented by its preferred stock owned and held by the Reconstruction Finance Corporation.

XXIV.

That within the time provided by law the said State Board of Equalization fixed the rate of taxa-

tion to be levied for state purposes, and transmitted to the Board of Supervisors of each of the respective counties that are parties defendant to this suit a statement of the changes which it had made in the assessment and the rate of tax which was to be levied and collected within said county for state purposes, and each of said Board of Supervisors received said statement and ordered placed on the tax roll the respective valuations made by the [101] respective county assessors as hereinabove alleged as ordered changed by said State Board of Equalization, and that there were thereupon placed upon said tax rolls, and that there now appear on said tax rolls of each of the five counties herein complained of, the following valuations, to-wit:

County.	Valuation on Tax Roll
Maricopa	$887,034.51
Pima	318,510.00
Graham	22,470.00
Yavapai	40,763.84
Gila	45,110.00

The said valuations are excessive, illegal and void to the extent and for the reasons following:

Said valuation in Maricopa county is excessive and illegal in the sum of $590,922.00, by reason of the fact that said sum is the valuation placed by the State Board of Equalization upon that portion of the $1,240,000.00, preferred stock of the plaintiff apportioned to Maricopa county.

Said valuation in Pima county is excessive and

illegal in the sum of $239,844.92, for the reason that said sum, while attributed to values represented by tangible real and personal property in Pima county is in reality the valuation of the portion assessable in Pima county of the $1,240,000.00 par value of preferred stock of the plaintiff, owned and held by the Reconstruction Finance Corporation.

Said valuation in Graham county is excessive and illegal in the sum of $9,447.51, for the reason that said sum, while attributed to values represented by tangible real and personal property in Graham county is in reality the valuation of the portion assessable in Graham county of the $1,240,000.00 par value of preferred stock of the plaintiff, owned and held by the Reconstruction Finance Corporation.

Said valuation in Yavapai county is excessive and illegal in the sum of $27,155.90, for the reason that said sum [102] was directed to be added to the tax roll by the State Board of Equalization as the value of the portion assessable in Yavapai county of the $1,240,000.00 of preferred stock of the plaintiff owned and held by the Reconstruction Finance Corporation.

Said valuation in Gila county is excessive and illegal to the extent of $11,276.66, being approximately one-fourth of the amount of the valuation of the common stock of the plaintiff, arrived at by the County Assessor of Gila county for the reason that said County Assessor and the State Board of

Equalization made no reduction from the full book value of the shares of common stock of the plaintiff in Gila county, as they did of the valuation of the shares of stock in counties of the state in which other banks were situated, to equalize the value of plaintiff's shares of stock with valuations placed on the shares of stock of other banks, and other classes of property and moneyed capital in the hands of individual citizens of the state coming into competition with the business of national banks.

XXV.

That after the completion of the valuation of plaintiff's shares of stock, and the placing thereof on the tax rolls as aforesaid in the respective counties, the Board of Supervisors and the governing bodies of the cities and towns of each of said counties, (except the city of Phoenix, Maricopa county), finally determined the estimates provided for by Section 3098, Revised Code of Arizona for 1928, and the School Superintendents in said counties furnished to said Boards of Supervisors the estimates provided for by Section 1090, Revised Code of Arizona, 1928, and said Boards of Supervisors assessed taxes for the several amounts estimated as well as the state taxes, at the rate fixed aforesaid upon the taxable property of the county, computed and carried out the real and personal property [103] tax and total tax of every person on said tax rolls, and computed at the proper tax rates deter-

mined by the Board of Supervisors, and the State Board of Equalization, upon the aforesaid valuations and entered upon the said tax rolls as taxes upon the shares of stock of the shareholders of the plaintiff and as payable by the plaintiff, the following amounts, to-wit:

Maricopa county	$44,911.17
Pima county	20,048.36
Graham county	1,334.22
Yavapai county	2,025.98
Gila county	5,728.90

That upon the completion of the tax rolls for the year 1636, said tax rolls containing thereon the respective items of taxes set forth above, the Chairman of the Board of Supervisors of each of said counties as prescribed by statute, annexed thereto, under his hand, a warrant commanding the county treasurer and ex-officio tax collector to collect from the several persons named in said tax roll, including plaintiff, one-half of the taxes set opposite their respective names, including the illegal and void taxes, taxed, assessed and levied aforesaid, on or before the first Monday in November 1936, and the other one-half of said taxes on or before the first Monday in May, 1937. That said tax rolls, together with said warrants, were delivered to the respective county treasurers of said counties, parties defendant hereto in the manner and within the time provided by law.

XXVI.

That upon receipt of said assessment and tax roll, each of said county treasurers, being parties defendant hereto, gave official notice specifying that one-half of said taxes, including said illegal and void taxes so levied and assessed upon plaintiff's said shares of stock would be due and payable on the first Monday in September, 1936, and would become delinquent on the first Monday in November in 1936, at 5:00 [104] o'clock P. M., and that the remaining one-half of said taxes would be due and payable on the first Monday in March, 1937, and would become delinquent on the first Monday in May, 1937, at 5:00 o'clock P. M., and that unless said taxes were paid prior to becoming delinquent, interest would accrue thereon from the time of such delinquency at the rate of ten per cent per annum until paid, or until said property or such part thereof as was necessary had been sold, and thereafter, interest would accrue thereon at the rate provided in the tax certificates issued covering the sale of said property, but not to exceed fifteen per cent per annum.

XXVII.

That before the first Monday in November, 1936, and before the filing of this Bill of Complaint, and during the regular office hours of the respective county treasurers who are parties defendant hereto, plaintiff tendered and offered to pay to each of said county treasurers the amount of taxes which plaintiff believes to be justly due and owing by

the owners and holders of its shares of common stock to said county treasurers for said county and local taxes for the whole year of 1936. The amounts which the plaintiff so tendered and offered to pay to each of said county treasurers are as follows:

Maricopa County	$14,983.29
Pima County	4,900.84
Graham County	673.71
Yavapai County	677.32
Gila County	4,296.68

That plaintiff determined the amounts so above tendered as the amount justly due and owing to the county treasurers for taxes for the year 1936, by computing the valuations of its common capital stock in the manner in which said county treasurers and State Board of Equalization computed the same, excluding however, from said computation plaintiff's shares of preferred stock owned and held by the Reconstruction Finance [105] Corporation, and the assets represented thereby. That is to say, plaintiff added together its common capital stock of $260,000.00, its surplus of $260,000.00 its undivided profits of $101,367.14, making the sum of $621,367.14, and then took the proper percentage thereof apportioned to each of said counties, to-wit: Maricopa County, 63.54 per cent, Pima county, 16.88 per cent, Graham county, 2.73 per cent, Yavapai county, 2.92 per cent, Gila county, 7.26 per cent, thus

making the actual values of plaintiff's shares of common stock in each of said counties as follows:

Maricopa County	$394,816.68
Pima County	104,886.77
Graham County	16,963.32
Yavapai County	18,143.92
Gila County	45,110.00 (approximatey)

and then took 75% of each of said amounts, thus arriving at a taxable value in each of said counties for plaintiff's shares of common stock as follows:

Maricopa County	$296,112.51
Pima County	78,665.08
Graham County	12,722.49
Yavapai County	13,607.94
Gila County	33,832.50

and computed the tax at the respective rates as fixed in said counties by the proper authorities therein, thus arriving at the tax in each of said counties at the above amounts.

That the amount so tendered by plaintiff is the amount of taxes which would have been assessed against its shares of common capital stock in the several counties that are parties defendant hereto by the action of the assessing officials and State Board of Equalization if said taxing officials and State Board of Equalization had applied the same basis of valuation to plaintiff's shares of common capital stock as they applied to the shares of other

banks, state and national, doing business in the State of Arizona, and is likewise the amount that the taxing officials and the State Board of Equali-
[106] zation would have assessed plaintiff's shares of common capital stock if they had not attempted to impose additional taxes upon plaintiff by reason of the fact that preferred shares of stock of the plaintiff were owned and held by the Reconstruction Finance Corporation.

XXVIII.

That each of the said county treasurers aforesaid refused and continues to refuse to accept payment of the amount tendered upon the ground that said amount tendered was not the full amount of taxes assessed to and payable by plaintiff for the purposes for which it was tendered. That each of said county treasurers, on refusing said tender, declared that it was his duty to collect from plaintiff the amount of taxes assessed against plaintiff's shares of stock that appeared on his books, and that he would proceed to collect the same in accordance with the laws of the state of Arizona.

That plaintiff has been and is willing and able, and has stood ready and will continue to stand ready to pay to each of the above mentioned county treasurers the amounts tendered as aforesaid, and that if this court shall hold that the sums which plaintiff has tendered and offered to pay to the said county treasurers, or any of them, for the purposes for which said tenders were made, are

less than the amounts found justly and equitably due and owing by the plaintiff to the said county treasurers, or any of them, for 1936 taxes, plaintiff stands ready, able and willing to pay, and will pay to the said county treasurers, and each of them, such other and further sum or sums as this court shall find to be just and equitable.

XXIX.

That it was and is provided by Section 3101, Revised Code of Arizona for 1928, as amended by Chapter 106, Session Laws of Arizona for 1931, that all taxes levied upon real or personal [107] property shall be a lien upon the property assessed, which lien shall attach on the first Monday in January in each year and shall not be satisfied or removed until such taxes, penalties, charges and interest are paid or the property is finally vested in a purchaser under a sale for taxes, and that said lien shall be prior and superior to all other liens and encumbrances upon said property, except liens and encumbrances held by the state of Arizona. That it is further provided by said section, amended as aforesaid, that personal property shall be liable for taxes levied on real property and real property shall be liable for taxes levied on personal property, and that a judgment against real property for non-payment of taxes thereon or assessed to the personal property of the same person shall not be prevented by showing that the owner thereof was possessed of personal property out of which the taxes could have been made.

That it was and is provided by Section 3070, Revised Code of Arizona, 1928, that the taxes due upon shares of banking corporations or associations shall be paid by such corporation or association and shall be a lien against and assessed to such shares of stock and no such corporation or association shall pay any dividends to any shareholder who is in default in the payment of taxes due on his shares, nor shall it permit the transfer on its books of any shares the owner of which is in default in the payment of his taxes on the same.

That it was and is provided by Section 3112 of the Revised Code of Arizona, 1928, that the county treasurer may at any time after receiving the tax roll, collect by distraint and sale, if not otherwise collected, the taxes due on personal property; that the sale must be at public auction after one week's notice of the time and place thereof, and must be of a sufficient amount of the property issued to pay the taxes, fees and costs, and that on payment of the purchase price and [108] the delivery of the property with a bill of sale thereof, title thereto vest in the purchaser.

That it was and is provided by Section 15 of Title 103 of Arizona Session Laws of 1931, that taxes upon real estate if unpaid, shall become delinquent, first half, on the first Monday in November, and second half, on the first Monday in May, of each year, and that it was and is provided by Section 17 of said Chapter 103, that all taxes shall bear interest from the time of delinquency at the

rate of ten per cent per annum until paid, and a fraction of a month shall be counted as a whole month, and that it was and is further provided by Section 18 of said Chapter 103, that all real property upon which the taxes, including personal property taxes secured thereby are unpaid and delinquent, shall be subject to sale as in said chapter provided.

XXX.

That by virtue of the foregoing provisions of the statutes of the state of Arizona, the taxes levied and assessed upon plaintiff's shares of stock for the year 1936 in the manner aforesaid, whether legal or illegal, became payable on or before the second day of November, 1936.

Plaintiff in the year 1936, and at all times since, has owned and held real estate in all of the counties which are parties defendant to this suit, except Yavapai County.

That many of the owners and holders of plaintiff's shares of stock owned and held during the year 1936, and now own and hold real estate in one or more of said counties, and that the aforesaid illegal taxes are an apparent lien or cloud upon the real estate owned by the plaintiff in the respective counties and upon the real estate of the shareholders of the plaintiff in the respective counties as well as upon said shares of stock and that said shares of stock on said 2nd day [109] of November, 1936, became subject to seizure and sale for said taxes in the manner provided by the Statutes of

Arizona above set forth. That by reason of the statutes above mentioned, plaintiff could not with safety to itself permit the transfer of shares of its stock on its books or pay dividends to its share-holders on its shares of stock and if it refused to permit such transfers or refused to pay any such dividends on account of the non-payment of said taxes by said share-holders, it might subject itself to numerous suits brought by its shareholders to compel such transfers or to recover damages for refusing to make such transfers or to pay dividends.

That it was impossible for plaintiff to determine from the assessments made in Pima and Graham counties whether the taxes imposed in said counties were imposed solely on plaintiff's shares of common stock or upon both common and preferred shares and if plaintiff assumed that said taxes were imposed upon both classes of stock, it was impossible to apportion the same between the common and preferred shares. Hence, if plaintiff paid said taxes as demanded by the treasurers of said two counties it would not know to which class of its shareholders to charge said payment, or if it charged the same to both classes, it would not know what amount to charge to each, and if it attempted to secure reimbursement by withholding payment of dividends or refusing transfers of shares, it would subject itself to a separate suit for damages by each of its shareholders.

The plaintiff, finding itself involved in the diffi-

culties above mentioned, filed its original Bill of Complaint in this court before the second day of November, 1936, and prayed for the issuance of a temporary injunction restraining the defendants from proceeding to collect the taxes complained of; that after said complaint was filed, a stipulation was entered [110] into by and between the plaintiff and the several defendants by which it was stipulated and agreed that the several defendant county treasurers would accept the amount of taxes theretofore tendered by the plaintiff to each of them without prejudice to their right to collect the remainder at any future time and that the plaintiff might withdraw its application for temporary injunction and that the said defendants would refrain from proceeding to enforce collection of the taxes alleged by plaintiff to be illegal during the pendency of this suit, but that said defendants or any of them should have the right at any future time to proceed to collect said taxes in the manner they thought proper and that if they did so proceed, or threaten to proceed, plaintiff should have the right to renew its application for temporary injunction. That said stipulation expressly provided that the rights of any party to prosecute or defend this suit should not be prejudiced or affected in any way by said stipulation, or anything done in pursuance thereof except in so far as said stipulation expressly provided therefor. That said stipulation was approved by an Order regularly made and entered by the court.

That notwithstanding the above mentioned stipulation the County Treasurer of Pima County never accepted the amount of taxes provided to be paid to and accepted by him.

That on or about the 10th day of April, 1939, the County Treasurer of Pima County gave notice to the plaintiff that he would proceed to collect all of the taxes assessed in his county against plaintiff's shares of stock for the year 1936, including those alleged to be illegal by the plaintiff, as well as those admitted to be legal.

That plaintiff is informed and believes and upon such information and belief alleges that said County Treasurer will proceed to collect such taxes in the manner provided by law [111] unless restrained by the order of this court, and that by reason of the aforesaid action of the County Treasurer of Pima county, all of the defendants now renew their threat to enforce collection of the taxes hereby sought to be enjoined. That those county officers made parties defendant hereto who have come into office since filing the original Bill of Complaint continue the threat of their predecessors to enforce collection of said taxes, and that by reason of the aforesaid threats, plaintiff now renews its application for temporary injunction.

XXXI.

That it was and is provided by Section 3065, Revised Code of Arizona for 1928, that a taxpayer dissatisfied with the amount of his assessment as

reviewed by the State Board of Equalization, may appeal from said assessment to the Superior Court of the county where the taxes are payable; that the remedy of such appeal was and is not available to the plaintiff to relieve it from the burden of the illegal taxes herein complained of for the following reasons:

1. That said appeal is by said Section 3065 limitem to a determination of the full cash value of the property assessed, and does not give the party appealing the right to question the legality of the tax imposed or any part thereof.

2. That the judgment of the court on such appeal is by said Section 3065, limited to finding the full cash value of the property assessed and said judgment cannot provide for the elimination from the assessment of property illegally or wrongfully assessed.

3. That the valuations made by the county assessors of Pima and Graham counties sought to be reviewed herein by plaintiff, present an issue as to the proper division of the assets of plaintiff between each of said counties and the county of Maricopa, in which the principal office of plaintiff [112] is situated, and that said issue cannot be considered or determined on such appeal.

That such appeal would have to be taken separately from the valuation made by each of the five counties to the Superior Court of that County. The question of apportionment among said five counties would have to be determined separately

in each of said counties without an opportunity for any county, except the one in whose Superior Court the particular suit was pending, to be heard on said question, with the result that there would probably be five different decisions and five different appeals to the Supreme Court, all of which would have to be determined without opportunity for the several counties to directly contest their respective contentions.

4. That no such appeal can be taken unless the appellant first pays to the said county treasurer the amount of taxes levied against his property, and unless so paid the appeal must be dismissed by the court, and there is no provision for the county treasurer withholding the disbursements of the money paid by appellant until the determnation of said appeal and the judgment on the appeal, if in favor of the appellant, can only be a judgment against the county for the amount of the excess taxes paid and such judgment will be of little value to the plaintiff for the reasons hereinafter set forth.

5. That said appeal lies only to the Superior Court of the county in which the tax is assessed and is not available in a Federal Court; that such appeal is a judicial and not an administrative remedy and plaintiff, under the constitution and laws of the United States, is not obliged to resort thereto but may bring its action in a Federal Court of Equity.

XXXII.

That it was and is provided by Section 55 of Chapter 103 of Arizona Session Laws for 1931, that no person upon whom a [113] tax has been imposed under any law relating to taxation shall be permitted to test the validity thereof either as plaintiff or defendant, unless such taxes shall first have been paid to the proper county treasurer together with all penalties thereon and that no injunction shall ever issue in any court or proceeding in any court against the state or against any county, municipality or officer thereof, to prevent or enjoin the collection of any tax levied.

That it was and is provided by the aforesaid Section 53, that after payment of taxes an action may be maintained to recover any tax illegally collected, and if the tax due shall be determined to be less than the amount paid, the excess shall be refunded in the manner "hereinbefore provided", but that said Chapter 103, Arizona Session Laws of 1931, wholly fails to provide in what manner said refund may be made.

That it was and is provided by Section 876 of the Revised Code of Arizona for 1928, that the treasurers of the several counties shall transmit to the state treasurer all money in the county treasury belonging to the state, or collected for it within ten days after receipt of a letter from the state treasurer to that effect.

That it was and is provided by Section 3107, Revised Code of Arizona for 1928, that the county

treasurer shall pay to the treasurer of each city or town in his county, on the first day of each month in each year, all money in his hands collected for the previous month on taxes for said city or town.

That it was and is provided by Section 1029, Revised Code of Arizona for 1928, that the county treasurer shall receive and hold as a special fund all school moneys, and keep a separate account thereof, and when it is apportioned among the school districts, shall keep a separate account for each district, notify the County School Superintendent on the first of [134] each calendar month of the amount of the county school fund and special district funds on hand in the treasury to the credit of such fund, and pay over on the warrants of the county school superintendent duly endorsed by the person entitled to receive the same, any or all such money.

That there is no provision in the laws of the state of Arizona requiring or permitting county treasurers to withhold from apportionment or distribution to the state or city or towns, or school districts, or other legal subdivisions therein, any tax money paid to them under protest or as a condition precedent to the appeal provided by Section 3065, Revised Code of Arizona for 1928, from the valuation fixed by the State Board of Equalization.

XXXIII.

That the Supreme Court of the state of Arizona has construed Section 55, Chapter 103 of the Ses-

sion Laws of Arizona for 1931, so as to give a taxpayer who pays taxes under protest and sues to recover the same an ordinary judgment against the county into whose treasury the money is paid by the taxpayer. That said court has construed said Section 55 as not creating a trust fund of the tax money paid under protest, and as not requiring the county treasurer to withhold distribution of said tax moneys so paid under protest, and as not requiring said county treasurer to refund the particular moneys paid to him, and has further interpreted said Section 55, together with sections construed together therewith as giving to the taxpayer who pays his taxes under protest merely the right to an ordinary judgment against the county on an equality with other general obligations of the county. As thus construed, said Section 55 gives to the taxpayer paying taxes under protest, if the taxes are shown to have been illegal, a judgment against the county which it is the duty of the Board of Supervisors [115] of the county to pay out of funds in the county treasury not otherwise appropriated, or, if there are no such funds, it becomes the duty of the Board of Supervisors to budget the judgment as a county expense and levy a tax to pay it. That the remedy thus given to the taxpayer who pays illegal taxes under protest is wholly inadequate for the reason that if the plaintiff in this suit should pay the illegal taxes herein complained of, under protest, and should sue to recover the same and obtain a judgment against the respective com-

ties, it would be unable to realize on said judgments for the reason that there are no funds in the treasuries of said counties not otherwise appropriated, which can be applied to the payment of said judgments, and that the duty imposed upon the boards of supervisors to include such judgments in the budget can be exercised only at the time provided by law for the making of the budget, to-wit, on or about the first Monday in August of each year. That provision for such budget is made by Sections 3097 and 3098, Revised Code of Arizona, 1928, and by said sections, and by Sections 3093 and 3094, Revised Code of Arizona, 1928, providing for the levy of taxes, no allowance is made for delinquency in collection, so that if the plaintiff should recover judgments for taxes paid under protest against the several counties that are parties defendant to this suit by virtue of the sections of the statutes aforesaid, a levy would be made only for the amount of such judgments and no allowance whatsoever would be made for delinquencies in the collection of taxes. That by reason of the existing financial depression and the difficulty of collecting taxes in all of the counties which are parties defendant to this suit, a large percentage of the taxes levied becomes delinquent, and remains uncollected for a period of years, and a large percentage of the taxes hereafter levied will be- [116] come delinquent and remain uncollected for a period of years. That plaintiff is informed and believes, and upon such information and belief al-

leges that in Maricopa County, and in Gila County, two of the counties which are parties defendant to this suit, the percentage of unpaid taxes amounts to more than twenty-five per cent, and that in all probability such percentage of delinquencies will continue for a number of years to amount to more than twenty-five per cent, and that by the provisions of Section 33, Chapter 103, of the Arizona Session Laws of 1931, the proceeds of such delinquent taxes, when collected, are required to be distributed for the purposes for which they were originally levied, (exclusive of penalties, which go to the general fund of the county) and the statutes of the state of Arizona make no provision for a further levy to cover delinquencies in collection of the original levy, and that at the last four regular sessions of the legislature of the state of Arizona, has passed laws to a large extent remitting penalties on delinquent taxes.

That it is provided by said Chapter 103, Session Laws of Arizona for 1931, that real property subject to the lien for taxes thereon, or for taxes on personal property assessed to the same owner, may be sold, and when so sold, is subject to redemption for a period of three years. That the taxing officials in the several counties who are parties defendant to this suit, owing to the large amount of delinquent taxes therein, permit a period of time, as long as five years, to elapse before making such sales, and in some of the counties in which plaintiff is assessed

for taxes, no sales for taxes have been made for several years, notwithstanding delinquencies in the payment thereof, and that if and when such sales are made there are usually no purchasers for said real estate, and the same is and will continue to be struck off to the [117] state of Arizona, and no money will be collected on account of such sales until the expiration of the period of redemption, which is three years from the date of the sale, and that by reason of said provisions of the statutes of Arizona, and the existing financial depression, if plaintiff should pay the illegal taxes assessed against its shares of stock, and sue to recover the same from the respective counties, it would probably be more than a year from the date plaintiff obtained judgments before it would receive any payment on said judgments, and it would be many years before it would receive payment of more than 75% of said judgments, and in all probability a large percentage of said judgments would never be paid at all, for the reason that the full amount of the levy for said judgments would in all probability never be collected, for by reason of the acts of the legislature heretofore passed, and which will probably be passed hereafter, waiving the collection of penalties on delinquent taxes, there probably never will be sufficient unappropriated money in the treasuries of said counties to pay said judgments in full. That the illegal taxes against which plaintiff seeks relief in this cause are required to be paid to five different

county treasurers and there is no provision under the laws of Arizona by which one action or proceeding may be brought against the five counties, and therefore, plaintiff would in all events be required to bring at least five separate actions to recover illegal taxes paid by it under protest. That the duty enjoined by law upon the board of supervisors to include judgments for illegal taxes paid under protest in the budget and to make a levy for said judgments, if neglected by said boards of supervisors, is enforcible only by mandamus, and if said boards of supervisors in each of said counties should neglect to include the judgments that [118] might be recovered by plaintiff in their budgets, plaintiff would be required to bring five separate actions in mandamus against said boards of supervisors, after having brought five separate actions to recover judgments.

That by reason of the foregoing facts, plaintiff has the right to resort to a federal court of equity to enjoin the collection of said illegal taxes to avoid the necessity of bringing a multiplicity of suits.

XXXIV.

That as appears from the allegations hereinbefore made, the assessments made or attempted to be made on plaintiff's shares of stock in Pima and Graham counties are based upon a valuation of the physical properties owned and held by plaintiff in said counties. That plaintiff is advised and believes, and

upon such information and belief alleges that the taxing officials of said counties take the position and will assert in any proceeding to recover taxes from them, paid by plaintiff under protest, that under the provisions of Section 3071, Revised Code of Arizona for 1928, they have the right to value plaintiff's shares of stock at an amount not less than the actual cash value of the real and personal property of the plaintiff situated in their respective counties, and that said defendants attempt to justify the assessments made by them upon the real and personal property of the plaintiff in said counties of Pima and Graham as being a valuation of the shares of stock of plaintiff in an amount equal to the actual cash value of the real and personal property of the plaintiff situated in said counties, and that said taxing officials will assert in any suit involving the taxes assessed by them upon plaintiff's shares of stock that the valuation of plaintiff's shares of preferred stock must be apportioned to Maricopa county, the county in which plaintiff's principal banking [119] house is situated, and that the taxing officials of Maricopa county will assert in any suit involving the collection of any taxes imposed by them upon the shares of stock of the plaintiff that a proper percentage of plaintiff's shares of preferred stock must be apportioned to the several counties in which the plaintiff has branches, and that if the plaintiff should pay the taxes assessed against it in the several counties involved in this

suit, and should seek to recover that portion of the taxes imposed upon account of its preferred stock by separate suits against each of the several county treasurers of said counties, the defense would be made in each of said counties that there has not been made a proper apportionment between the several counties of the state of the valuation of plaintiff's shares of stock, and that by such defenses an issue will be presented as to such apportionment which can be determined only in a suit in equity to which all of said counties are parties, and that the laws of the state of Arizona do not authorize the joining in one suit for the recovery of taxes paid under protest, said several counties, and that by reason of such defect in the laws of Arizona, the remedy to pay said illegal taxes under protest and sue to recover the same is wholly inadequate.

That subsequent to the filing of the original complaint in this cause, at the time fixed by law for assessing taxes for the year 1937, the taxing officials of the several counties, parties hereto, and of other counties in the State of Arizona in which plaintiff has branches, assessed taxes for the year 1937 upon plaintiff's shares of stock; that all of such assessments were reviewed at the proper time by the State Board of Equalization; that said Board eliminated all values represented by plaintiff's preferred stock from such assessments for said 1937 taxes, except that in the case of Pima County the assess- [120] ment was again made for an amount equal to the full value of the tangible, real and personal prop-

erty owned by the plaintiff and situated in that County, said Pima County thus again assessing values represented by plaintiff's preferred stock owned and held by Reconstruction Finance Corporation, and said State Board of Equalization thus again declined to eliminate said values from said assessment and said Pima County imposed a tax of approximately $11,400.00 on values represented by plaintiff's preferred stock owned and held by Reconstruction Finance Corporation. Plaintiff did not appeal from the action of said Board of Equalization under Section 3065, Revised Code of Arizona for 1928, but paid the full tax assessed, under protest, and sued to recover said sum of $11,400.00 from Pima County, or, in the alternative, if Pima county's method of assessment should be found correct by the court, to recover said sum pro rata from the other counties to which it was paid.

The trial court held that the plaintiff's exclusive remedy provided by the State Law was by appeal to the Superior Court of the county, under Section 3065, Revised Code of 1928, and that plaintiff had no remedy to pay the tax under protest and recover the same under Section 55, Chapter 103, Session Laws of 1931; that there is no decision by the Supreme Court of Arizona authoritatively passing upon the question. Said Supreme Court has once said by way of dictum that the remedy provided by Section 55, Chapter 103, Session Laws of 1931, is available only when the tax is assessed under an unconstitutional law, and again it has said by way of

dictum that the remedy provided by Section 55, Chapter 103 Session Laws of 1931, is available whenever no other remedy is provided by law. There being conflicting declarations by it, said Supreme Court does not consider itself bound by either express- [121] ion and deems the question wholly open for future decision.

XXXV.

That by reason of the foregoing facts, plaintiff has no adequate remedy by payment of illegal taxes, and suing to recover the same, and is entitled to maintain this suit in equity for the purpose of preventing a multiplicity of suits, and to obtain an adjudication of the proper apportionment of taxes between the several counties parties hereto.

XXXVI.

That by reason of the provisions in the statute of the state of Arizona hereinbefore alleged, prohibiting the issuance of an injunction to prevent the collection of illegal taxes, plaintiff is without remedy in the courts of the state of Arizona, and has no remedy except in the United States District Court, for the District of Arizona.

XXXVII.

That the plaintiff has exhausted all administrative remedies available to it under the statutes and laws of the state of Arizona.

XXXVIII.

That by reason of all the matters and things hereinbefore alleged, plaintiff, unless granted the relief herein prayed for, will suffer great and irreparable damage and injury, and will be subjected to a multiplicity of suits, and has no plain or adequate remedy at law.

XXXIX.

That a large part of the taxes, the collection of which is herein sought to be enjoined is attempted to be levied and imposed upon the shares of preferred stock of the plaintiff owned and held by the Reconstruction Finance Corporation of the United States of America. That such levy and collection of taxes by the state or any subdivision or municipality [122] thereof is expressly prohibited by the Act of Congress approved March 20, 1936, which act expressly provides that such shares of preferred stock of national banks shall not be subject to taxation so long as they are owned and held by the Reconstruction Finance Corporation. That under the provisions of Sections 3069 and 3070, of the Revised Code of Arizona, 1928, no taxes are imposed upon national banking associations, but taxes are imposed upon the shareholders of such associations, and such associations are required to pay the taxes imposed on the shares of stock held by such shareholders as the agents of such shareholders. That under the provisions of said sections, it is the duty of plaintiff to pay any taxes legally levied upon its shares of stock, both common and preferred, and the penalties imposed by the statutes of Arizona will be im-

posed upon the plaintiff if it fails to pay any such taxes so legally levied and imposed.

That under the provisions of said Sections 3069 and 3070, of the Revised Code of 1928, plaintiff is required to deduct any taxes paid by it as the agent of its shareholders from dividends becoming payable to its shareholders. That by the provisions of the Act of Congress, approved March 20, 1936, the Reconstruction Finance Corporation is precluded from permitting the plaintiff to deduct any taxes levied upon the shares of preferred stock owned and held by it, so that if plaintiff is compelled to pay the taxes imposed upon its shares of preferred stock as hereinbefore set forth, it will be compelled to pay taxes levied upon the property of another, which it will have no means of recovering from the owner of said property, that is, the Reconstruction Finance Corporation, and that by being compelled to pay such taxes, plaintiff will be deprived of its property without due process of law.

That if it be held that any of the taxes sought to be [123] enjoined herein are not levied or imposed upon plaintiff's shares of preferred stock plaintiff alleges that the taxing officials and State Board of Equalization of the state of Arizona have intentionally imposed taxes upon its shares of common stock at a greater rate than they have imposed taxes upon the shares of stock of all other banks, state and national, in the state of Arizona, in violation of Section 1 of Article IX of the Constitution of Arizona prohibiting discrimination in assessment of taxes upon the same class of property and also

in violation of Section 548, Title 12, United States Code Annotated, providing that shares of stock in national banks shall not be taxed at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of the state coming into competition with the business of national banks.

XL.

That plaintiff herein and hereby expressly claims the right, privilege and immunity under the constitution and laws of the United States, of not being subjected to the payment of taxes imposed upon its shares of preferred stock owned and held by the Reconstruction Finance Corporation, and also the right, privilege and immunity of not being assessed for taxes on its shares of stock in violation of Section 548, Title 12, United States Code Annotated, and of not being deprived of its property without due process of law by an illegal and discriminatory assessment of taxes.

Wherefore, Plaintiff Prays:

1. That the assessment of plaintiff's said shares of stock, and the assessment of property owned and held by the plaintiff, made by the county assessors of the several counties parties hereto, for the purpose of state, county, school district and other local taxation, (except City of Phoenix [124] taxes) for the year 1936, as aforesaid, be decreed to be illegal and void and without any force or effect whatsoever, and to be in violation and contravention of the constitution and laws of the United States and the constitution and laws of the State of Arizona.

2. That the said taxes so levied and assessed upon plaintiff's said shares of stock, or upon property owned and held by the plaintiff for the year 1936, for state, county, school district and other local taxation, (except city of Phoenix taxes) set forth, be decreed to be wholly illegal and void. That any taxes which may hereafter be levied or assessed upon plaintiff's shares for said purposes for the year 1936, and based and computed upon said illegal and void assessment, likewise be decreed to be wholly illegal and void.

3. That the apparent lien resulting, and any apparent lien which may hereafter result from the levy and assessment of said taxes on plaintiff's said shares of stock, or on property owned and held by the plaintiff as aforesaid, be decreed to be wholly illegal and void, and without any force or effect whatsoever.

4. That the respective county treasurers, defendants herein, be directed to receive and accept from the plaintiff the respective sums of money heretofore offered and tendered to them, or such other sums as the court may find to be justly due and owing from the plaintiff and its shareholders to said county treasurers for taxes for the year 1938, levied or assessed against plaintiff's said shares of stock, or property owned and held by the plaintiff for state, county, school district and local taxes, for the year 1936, in full satisfaction as and for taxes levied and assessed for said purposes against plaintiff's said shares of stock for the year 1936.

5. That it be adjudged and decreed that plaintiff's [125] shares of preferred stock, and property of the plaintiff represented thereby, is wholly immune and exempt from taxation by or under the authority of the state of Arizona, so long as said shares of preferred stock are owned and held by the Reconstruction Finance Corporation of the United States of America.

6. That a temporary and interlocutory injunction issue out of and under the seal of this court, directed to the defendants, and each of them, commanding them and each of them, and each of their deputies, assistants, agents, servants, employees, attorneys, and successors in office, to desist from collecting or attempting to collect the whole or any part of said illegal and void taxes so levied or assessed, or which hereafter may be levied or assessed upon plaintiff's shares of stock, or upon property owned and held by the plaintiff for the year 1936, as aforesaid, or any penalty or interest thereon, either by distraint or sale, or by suit or sale, or issuance of delinquent tax certificates or otherwise, and to desist from instituting, conducting or causing to be instituted or conducted, any proceedings to enforce the payment of the whole or any part of said illegal or void taxes, or of said penalties, charges or interest, or to enforce or foreclose any apparent lien resulting from the levy and assessment of said taxes as aforesaid, or from advertising or offering plaintiff's said shares, or any part thereof, for sale for the purpose of collecting or

attempting to collect said taxes, penalties, charges or interest, or from issuing or delivering any tax certificate or certificates to any pretended purchaser or purchasers of said property, or any part thereof, or otherwise, by reason of or resulting from said illegal or void taxes so levied or to be levied as aforesaid, and from assessing or pretending to assess or to approve the assessment of [126] plaintiff's said shares for the purpose of state, county, school district and other local taxation in the year 1936, or in any similar manner, or any similar method, and from levying or assessing upon or against plaintiff's said shares in the year 1936, or in any succeeding year, any tax or taxes based or computed upon any such pretended assessment, and from collecting or attempting to collect any such taxes, said temporary or interlocutory injunction to remain in full force and effect until the final hearing of this cause; that upon said hearing, said injunction be made permanent.

7. That plaintiff have such other and further relief as the nature of the case may require, and as to the court may seem meet and equitable, and also a decree for its costs herein.

J. L. GUST,
C. W. RAWLINS,
GUST, ROSENFELD, DIVELBESS, ROBINETTE & COOLIDGE,
RAWLINS & RAWLINS,
Solicitors for Plaintiff.

State of Arizona,
County of Maricopa—ss.

J. L. Gust, being first duly sworn on oath deposes and says:

That he is one of the attorneys for The Valley National Bank, of Phoenix, a corporation, the plaintiff named in the above and foregoing Amended and Supplemental Bill of Complaint, and is duly authorized to make this verification on behalf of said plaintiff;

That he has read said complaint, and that the allegations therein contained are true of his own knowledge, except such allegations as are made upon information and belief, and those allegations he believes to be true.

J. L. GUST.

Subscribed and sworn to before me this 24th day of April, 1939.

ETHOL FROST,
Notary Public.

My commission expires: Feb. 27, 1940. [127]

[Endorsed]: Received copy of within this 24 day of April, 1939. Leslie C. Hardy, Attorneys for Deft. Maricopa County etc. Allan K. Perry for deft. Tax Commission.

[Endorsed]: Filed Apr. 24, 1939. Edward W. Scruggs, Clerk, United States District Court for the District of Arizona. By: Helen Stroup, Deputy Clerk. [128]

[Title of District Court and Cause—E-333, E-350.]

MINUTE ENTRY OF THURSDAY, DECEMBER 28, 1939.

Defendants' Motions to Dismiss having been submitted and by the Court taken under advisement.

It Is Ordered that said Motions to Dismiss be and they are denied. [129]

[Title of District Court and Cause—E-333.]

JOINT AND SEVERAL ANSWERS OF DEFENDANTS TO SECOND AMENDED AND SUPPLEMENTAL BILL OF COMPLAINT.

Come now the defendants and, without waiving their respective motions to dismiss heretofore filed herein, or any of them, and still insisting thereon, for their joint and several answers, combined in this single pleading for brevity, to the second amended and supplemental bill of complaint herein, say:

I.

Admit the allegations of paragraph I.

II.

Answering paragraph II, defendants deny that this suit arises under the constitution or laws of the United States; allege that there is a misjoiner of pretended causes of action against the defendants in that the grounds of complaint against the several defendants differ and are distinct and independent of each other.

III.

Admit the allegations of paragraph III. [130]

IV.

Answering paragraph IV, defendants represent to the Court that the allegations of this paragraph are of sections of the Arizona Constitution and statutes of which this Court takes judicial notice.

V.

Answering paragraph V, defendants represent to the Court that the allegations of this paragraph are of sections of the Arizona Constitution and statutes of which this Court takes judicial notice.

VI.

Answering paragraph VI, defendants admit that at the times mentioned therein plaintiff's common capital stock consisted of 52,000 shares at a par value of $5.00 each and that it issued on or about February 11, 1935, to the Reconstruction Finance Corporation 198,400 shares of preferred stock of the par value of $6.25 each and that the Reconstruction Finance Corporation has continued to hold said preferred stock, but deny that the total as a basis of the valuation of the plaintiff's common capital stock was the sum of $699,026.52 as alleged.

VII.

Answering paragraph VII, defendants admit the allegations thereof except as follows: deny that the statements delivered to the county assessors showed

the ownership or number of shares of preferred stock; deny that the total valuation of the common capital stock for taxation among the several counties is the sum alleged in said paragraph; deny that the statement showed proper apportionment [131] of the taxable value of said stock among the several counties.

VIII.

Answering paragraph VIII, defendants represent to the Court that the allegations thereof are wholly immaterial.

Deny the allegations thereof except that defendants admit that during the year 1934 the State Board of Equalization reduced the valuation of the capital stock of the banks of Arizona, including the plaintiff, for the purpose of taxation, 25%; deny that said banks were entitled to such reduction.

Admit that the State Tax Commission did not determine the taxability of preferred stock of banks held by the Reconstruction Finance Corporation.

IX.

Deny the allegations of paragraph IX.

X.

Deny the allegations of paragraph X.

XI.

Have no knowledge with respect to the allegations of paragraph XI and therefore deny the same.

XII.

Answering paragraph XII, defendants admit that the County Assessor of Maricopa County placed a valuation on the common capital stock of the plaintiff in the sum of $793,595.08, but deny that any part thereof represents the value of plaintiff's preferred stock in the hands of the Reconstruction Finance Corporation.

XIII.

Answering paragraph XIII, defendants admit that [132] the County Assessor of Pima County assessed the shares of stock of the plaintiff in said county by placing a valuation thereon in the sum of $327,590.00, and that said amount was equal to the valuation of the tangible real and personal property of the said bank in said county as shown in paragraph XIII.

XIV.

Answering paragraph XIV, defendants deny that there is any ambiguity about the assessment of the Pima County Assessor, and in that behalf allege that the said assessment was on the plaintiff's common capital stock and was not upon the tangible real or personal property of the plaintiff and was not upon the plaintiff's preferred stock and was in accordance with the last sentence of Section 3071 of the Revised Code of Arizona, 1928.

Defendants represent that the allegations with respect to the purchase of $400,000.00 worth of the plaintiff's preferred stock by the Reconstruction Finance Corporation and the purpose of such pur-

chase are of no materiality in this suit; and, not being informed with respect to the truth or falsity of such allegations, do deny the same.

XV.

Answering paragraph XV, defendants deny that the valuation of the Pima County Assessor was excessive or illegal as alleged in said paragraph or at all.

XVI.

Answering paragraph XVI, defendants admit that the County Assessor of Graham County assessed the shares of [133] stock of the plaintiff in said county by placing a valuation thereon in the sums of $22,590.00 and $6,795.00, and that said amounts in the aggregate were equal to the valuation of the tangible real and personal property of the said bank in said county.

XVII.

Answering paragraph XVII defendants deny that there is any ambiguity about the assessment of the Graham County Assessor, and in that behalf allege that the said assessment was on the palintiff's common capital stock and was not upon the tangible real and personal property of the plaintiff and was not upon the plaintiff's preferred stock and was in accordance with the last sentence of Section 3071 of the Revised Code of Arizona, 1928.

Defendants represent that the allegations with respect to the purchase of $840,000.00 worth of the plaintiff's preferred stock by the Reconstruction Finance Corporation and the purposes of such pur-

chase are of no materiality in this suit, and, not being informed with respect to the truth or falsity of such allegations, deny the same.

And defendants deny that the valuation of the said Graham County Assessor was or is excessive or illegal in the manner set forth in said paragraph or at all.

XVIII.

Answering paragraph XVIII, defendants allege that the assessments in Pima and Graham Counties are assessments and valuations of the plaintiff's shares of common capital stock and the taxes computed thereon are payable wholly by the owners of said shares of common stock, and [134] defendants deny that such assessments and valuations are, or that any of them is, wholly void or void at all, or that they are or any of them is excessive, confiscatory or discriminatory, or greatly in excess of the actual value of said common shares, or discriminatory between the holders of common shares in said bank and the holders of common shares in other banks, or between the holders of common shares of stock in the plaintiff and other classes of property in said counties; and deny that the assessments in said two counties or either of them amounts to a taxation of the preferred stock of the plaintiff in the hands of the Reconstruction Finance Corporation and deny that said assessments and valuations or either of them are in violation in any way at all of the provisions of Section 548 of Title 12 of the United States Code Annotated.

XIX.

Answering paragraph XIX, defendants deny that there showuld be deducted from the valuation placed by the Mohave County Assessor on plaintiff's common stock one-fourth thereof or that the said valuation should be reduced in any sum whatever.

XX.

Defendants admit the allegations of paragraph XX, with the exception of Mohave County; defendants deny the allegations with respect to the County of Mohave and its Board of Equalization.

XXI.

Defendants admit the allegations of paragraph XXI.

XXII.

Answering paragraph XXII, defendants admit that the plaintiff filed a protest with respect to the valuations therein mentioned and appeared before the State Board of [135] Equalization and urged correction and reduction of said valuations, but deny that the protest covered all the complaints against said valuations found in the plaintiff's bill; admit that the said Board of Equalization heard the plaintiff and refused and denied any relief to the plaintiff.

XXIII.

These defendants admit the allegations of paragraph XXIII.

XXIV.

Answering paragraph XXIV, defendants admit the allegations of paragraph XXIV, and in that behalf allege that the taxes therein mentioned were levied by the respective counties upon the plaintiff's common capital stock and were not levied upon plaintiff's preferred stock, and that they were and are legal and valid.

XXV.

These defendants admit the allegations of paragraph XXV except that any part of the taxes was illegal or void and this the defendants deny.

XXVI.

These defendants admit the allegations of paragraph XXVI except that any part of the taxes was illegal or void and this the defendants deny.

XXVII.

Answering paragraph XXVII, defendants admit the tenders therein alleged; represent that the allegations of the method employed by the plaintiff in arriving at what it deemed to be the correct valuations of the taxes are immaterial; have no knowledge with respect thereto and therefore [136] deny the same; deny that the capital stock of the plaintiff was taxed differently from the capital stock of other banks in Arizona and deny that any part of the taxes levied upon plaintiff's common capital stock was based on the plaintiff's preferred stock, and deny that the percentages assigned to the several counties as alleged in said paragraph were correct.

XXVIII.

Defendants admit the allegations of paragraph XXVIII.

XXIX.

Answering paragraph XXIX these defendants represent to the Court that the allegations of this paragraph are of sections of the Arizona statutes of which this Court takes judicial notice.

XXX.

Answering paragraph XXX these defendants admit that the 1935 taxes became payable November 4, 1935, that the plaintiff in that year and since then has owned real estate in all the counties which are defendants to this suit except Yavapai, that many of the owners of plaintiff's shares of stock owned in 1935 and continue to own real estate in one or more of said counties and that the taxes against said shareholders are liens on their real estate, and admit that the shares of stock in plaintiff became subject to seizure and sale for said taxes as provided by the laws of Arizona; that these defendants are not and have not been advised of what the plaintiff can safely do with respect to transferring shares of its stock or paying dividends thereon or what the plaintiff has actually done since this [137] suit was instituted and therefore deny the allegations that the plaintiff cannot so proceed with safety.

Deny that there was any ambiguity in the assessments made in Pima and Graham Counties and re-

peat the allegations that said assessments were against the plaintiff's shares of common capital stock.

Admit the stipulation alleged in said paragraph and that the County Treasurer of Pima County did on or about April 10, 1939 give notice that he would proceed to collect taxes assessed in his county against plaintiff's shares of common capital stock.

XXXI.

Answering paragraph XXXI defendants request the Court to take judicial knowledge of Section 3065 of the Revised Code of Arizona, 1928, and all other constitutional and statutory provisions of that State.

Defendants deny that the remedy provided by said Section 3065 was not available to the plaintiff for the reasons set forth in said paragraph XXXI or for any other reasons;

And in that behalf defendants represent to this Court that the procedure prescribed by said Section 3065 was open and available to the plaintiff and that this Court of equity should not entertain a petition to enjoin the collection of taxes due to the State of Arizona and the counties defendant hereto for the year 1935.

And defendants represent unto this Court that the plaintiff was bound to employ the method set forth in said Section 3065 and that if so it be that said method is judicial [138] in character, the same was available to the plaintiff not only in the Su-

perior Courts of the State of Arizona but also, by appropriate removal proceeding, in the United States District Court for the District of Arizona, where all of said proceedings could and would have been consolidated or considered and heard together.

XXXII.

Answering paragraph XXXII defendants represent unto the Court that the allegations thereof, with the exception of the last paragraph, are of sections of the Arizona statutes of which this Court takes judicial notice; that the said allegations are purely argumentative and immaterial for the reason that, as set forth in paragraph XXXIII of plaintiff's bill, the Supreme Court of the State of Arizona has held in the case of Maricopa County v. Hodgin, 46 Ariz. 247, that the taxpayer may bring an action against the county to recover taxes illegally paid, and secure judgment against and payment from said county, notwithstanding the fact that the county authorities had distributed the taxes as collected to the State and municipal authorities.

XXXIII.

Answering paragraph XXXIII defendants represent to the Court that the reference to the decision of the Supreme Court of Arizona in said paragraph is to said case of Maricopa County v. Hodgin, of which this Court takes judicial notice; that the judgment allowable in an action by a taxpayer against a county is on the same basis as any other

judgment against said county and of equal validity.

[139]

These defendants deny that the remedies given by the laws of the State of Arizona and particularly Section 3065 and Section 55, Chapter 103 of the Session Laws of 1931, are inadequate.

These defendants represent to the Court that the argument of the plaintiff with respect to the operation of the budget law upon the collection of taxes is immaterial; that if it were accepted no judgment against the county would ever be paid in full; that in truth and in fact under the laws of the State of Arizona all judgments against the defendant counties have been and are promptly paid in full.

And these defendants deny that if the plaintiff had paid its taxes as levied and assessed against its common capital stock in the several counties defendant to this suit, and had secured judgments either under Section 3065 of the 1928 Code or Section 55, Chapter 103 of the Session Laws of 1931, they would not have been promptly paid in full.

Defendants represent that the allegations with respect to the operation of the budget laws of Arizona and the right to proceed against the counties for taxes allegedly illegally collected and the necessity for maintaining more than one suit are of sections of the Arizona statutes of which the Court takes judicial notice; defendants deny that the relief afforded by the provisions of the Arizona law would require a multiplicity of suits by plaintiff or any more suits than would be required of any taxpayer

owning property in more than one county and deny that more than one action by plaintiff under Section 55, Chapter 103, Session Laws of 1931 would be necessary. [140]

XXXIV.

Answering paragraph XXXIV, defendants admit that the taxing officials of Pima and Graham Counties take the position that they have the right to value plaintiff's shares of taxable stock in each of such counties at an amount not less than the actual cash value of the real and tangible personal property of the plaintiff situated in their respective counties; deny that said officials of said counties will or do assert that the valuation of plaintiff's preferred stock must be apportioned to Maricopa County; and in that behalf defendants allege that the taxing authorities of said two counties take the position that whenever the valuation of the taxable shares of a bank having branches in several counties as apportioned on the basis of assets is less than the value of the real and tangible personal property of the bank situated in such county, the value of the taxable stock in such county is increased to the extent of the difference.

Defendants represent that the allegations with respect to an action brought by plaintiff against the several counties defendant hereto as well as other counties for taxes collected from the plaintiff for the year 1937, which was a single action against all of said counties under Section 55, Chapter 103, Ses-

sion Laws of 1931, and the opinion of the trial court in said action and the attitude of the Supreme Court of Arizona on the availability of certain sections of the Arizona statutes for the recovery of illegally collected taxes are immaterial; and in that behalf defendants represent to the Court that the plaintiff takes the position in said action that Section 3065 is not exclusive under [141] the circumstances of said action and that the remedy by Section 55, Chapter 103, Arizona Session Laws of 1931, is available.

XXXV.

Defendants deny the allegations of paragraph XXXV.

XXXVI.

Defendants deny the allegations of paragraph XXXVI.

XXXVII.

Defendants deny the allegations of paragraph XXXVII.

XXXVIII.

Defendants deny the allegations of paragraph XXXVIII.

XXXIX.

Answering paragraph XXXIX defendants have no knowledge relative to the advice given to the plaintiff concerning the taxability of its preferred stock prior to March 20, 1936, and therefore deny the allegations in that regard; defendants represent to the Court that plaintiff's original bill of complaint was founded upon the contention that the

defendants had taxed its preferred stock which it alleged to be exempt from taxation; and that it otherwise presented no federal question; defendants represent that this Court takes judicial notice of the Act of Congress passed March 20, 1936.

XL.

And for separate defense, defendants allege that [142] the plaintiff in this action had available to it by the laws of the State of Arizona an administrative remedy, to-wit, that provided by Sections 3056-3062 inclusive, Arizona Revised Code of 1928, wherein the State Tax Commission of Arizona had full authority to determine the proper valuation to be fixed upon the plaintiff's taxable shares of stock in the several counties in which it was operating in the year 1935 and to settle and determine any and all questions of apportionment of the valuation of plaintiff's taxable stock among such counties; that the plaintiff did not avail itself of such remedy prior to the institution of this suit, or at all.

XLI.

And for separate defense, defendants allege that action taken by the plaintiff before the State Board of Equalization constituted a proceeding under Section 3063, Arizona Revised Code of 1928 and plaintiff, if dissatisfied with the amount of its assessment as fixed by the said Board, had the remedy of appeal therefrom pursuant to the provisions of Section 3065 of the Arizona Revised Code of 1928;

that the plaintiff did not avail itself of the remedy therein provided prior to the institution of this suit, or at all.

XLII.

And for separate defense, defendants allege that if said Section 3065, mentioned in the preceding paragraph of this answer, be held to be judicial in character, as alleged by the plaintiff, it did afford to the plaintiff a full, complete and adequate remedy available not only in the Courts of the State of Arizona but of the United States District Court for the District of Arizona by removal to the law side [143] thereof.

XLIII.

And for separate defense, defendants allege that Section 55, Chapter 103, Arizona Session Laws of 1931, did afford to the plaintiff herein a plain, adequate and speedy remedy at law both in the Courts of the State of Arizona and in the United States District Court for the District of Arizona on the law side thereof.

XLIV.

And for separate defense, defendants allege that at the time this bill was brought it presented no federal question to this Court for the reason that said bill was founded on the allegations and contention, insofar as any federal question was presented, that the taxes complained of were in part upon the preferred stock of the plaintiff and that such preferred stock was exempt from taxation:

that at said time and until and including March 20, 1936 the preferred stock of the plaintiff was taxable by and under the authority of the State of Arizona.

XLV.

And for separate defense, defendants allege that under and pursuant to the laws of the State of Arizona in effect in 1935 and at the present time all taxes become a lien against the taxed property as of January 1 of the taxable year; that long prior to the passage of the Act of Congress of March 20, 1936 mentioned in paragraph XXXIX of plaintiff's bill the taxes of which the plaintiff complains had become a lien on the taxable shares of plaintiff's stock and had become payable; that if in truth and in fact [144] any part of the taxes were levied against the plaintiff's preferred stock, which these defendants deny, the said Act of Congress was unconstitutional and void in that it deprives the State of Arizona and the counties thereof of their property without due process of law contrary to the Fifth Amendment to the Constitution of the United States.

XLVI.

And for separate defense, defendants allege that said Act of Congress, insofar as it purports to operate retroactively upon the rights of the State of Arizona and the defendant counties to collect taxes for the year 1935 already levied and payable, is the attempted exercise of a power not delegated to the United States by the Constitution of the

United States and not prohibited to the State of Arizona and it violates the Tenth Amendment to said Constitution.

XLVII.

For separate defense, defendants allege that said Act of Congress of March 20, 1936 is unconstitutional and void in that the Congress of the United States was without power or authority to annul and destroy property rights lawfully and validly accrued to the State of Arizona in the exercise of its power of taxation to raise revenues for state and county purposes and the attempt so to do by said Act of Congress constitutes an invasion of the sovereign rights of the State of Arizona.

Wherefore, these defendants pray that the plaintiff take nothing by its suit and that they have their costs and [145] such other relief as may be meet and just.

JOE CONWAY,
Attorney General, State of Arizona,
W. E. POLLEY,
Assistant Attorney General,
RICHARD F. HARLESS,
County Attorney, Maricopa County,
LESLIE C. HARDY,
Deputy County Attorney, Maricopa County,

CHAS. ROGERS,
County Attorney, Graham County,
E. ELMO BOLLINGER,
County Attorney, Mohave County,
J. MERCER JOHNSON,
County Attorney, Pima County,
CONNER & JONES,
By GERALD JONES,
Special Attorneys for Pima County, Arizona.
303-6 Valley National Building, Tucson, Arizona.

[Endorsed]: Filed Sep. 24, 1940. Edward W. Scruggs, Clerk, United States District Court for the District of Arizona. By: Gwen J. Ballard, Deputy Clerk. [146]

[Title of District Court and Cause—E-350.]

JOINT AND SEVERAL ANSWERS OF DEFENDANTS TO AMENDED AND SUPPLEMENTAL BILL OF COMPLAINT.

Come now the defendants and, without waiving their respective motions to dismiss heretofore filed herein or any of them, and still insisting thereon, for their joint and several answers, combined in this single pleading for brevity, to the amended and supplemental bill of complaint herein, say:

I.

Admit the allegations of paragraph I.

II.

Answering paragraph II, defendants deny that this suit arises under the constitution or laws of the United States; allege that there is a misjoinder of pretended causes of action against the defendants in that the grounds of complaint against the several defendants differ and are distinct and independent of each other.

III.

Admit the allegations of paragraph III. [147]

IV.

Answering paragraph IV, defendants represent to the Court that the allegations of this paragraph are of sections of the Arizona Constitution and statutes of which this Court takes judicial notice.

V.

Answering paragraph V, defendants represent to the Court that the allegations of this paragraph are of sections of the Arizona Constitution and statutes of which this Court takes judicial notice.

VI.

Answering paragraph VI, defendants admit that at the times mentioned therein plaintiff's common capital stock consisted of 52,000 shares at a par value of $5.00 each and that it issued on or about

February 11, 1935, to the Reconstruction Finance Corporation 198,400 shares of preferred stock of the par value of $6.25 each and that the Reconstruction Finance Corporation has continued to hold said preferred stock, but deny that the total as a basis of the valuation of the plaintiff's common capital stock was the sum of $610,026.52 as alleged.

VII.

Answering paragraph VII, defendants admit that the amount of capital stock, surplus and undivided profits and shares of capital stock were on January 1, 1936 as alleged therein but deny that a total as a basis for the valuation of its common stock for the year 1936 was $621,367.14.

VIII.

Answering paragraph VIII, defendants admit the [148] allegations thereof except as follows: deny that the statements delivered to the county assessors showed the ownership or number of shares of preferred stock; deny that the total valuation of the common capital stock for taxation among the several counties is the sum alleged in said paragraph; deny that the statement showed proper apportionment of the taxable value of said stock among the several counties.

IX.

Answering paragraph IX, defendants represent to the Court that the allegations thereof are wholly immaterial.

Deny the allegations thereof except that defendants admit that during the year 1934 the State Board of Equalization reduced the valuation of the capital stock of the banks of Arizona, including the plaintiff, for the purpose of taxation, 25%; deny that said banks were entitled to such reduction.

Admit that the State Tax Commission did not determine the taxability of preferred stock of banks held by the Reconstruction Finance Corporation.

X.

Deny the allegations of paragraph X.

XI.

Deny the allegations of paragraph XI.

XII.

Deny the allegations of paragraph XII.

XIII.

Answering paragraph XIII, defendants represent to the Court that the allegations thereof are immaterial; [149] that they have no knowledge concerning the truth or falsity thereof.

XIV.

Answering paragraph XIV, defendants admit that the County Assessor of Maricopa County placed a valuation on the common capital stock of the plaintiff in the sum of $787,896.00, but deny that any part thereof represents the value of plaintiff's preferred stock in the hands of the Reconstruction Finance Corporation.

XV.

Answering paragraph XV, defendants admit that the County Assessor of Pima County assessed the shares of stock of the plaintiff in said county by placing a valuation thereon in the sum of $318,510.00, and that said amount was equal to the valuation of the tangible real and personal property of the said bank in said county as shown in paragraph XV; deny that there is any ambiguity about the assessment of the Pima County Assessor and in that behalf allege that the said assessment was on the plaintiff's common capital stock and not upon the plaintiff's preferred stock and was in accordance with the last sentence of Section 3071 of the Revised Code of Arizona, 1928.

Defendants represent that the allegations with respect to the purchase of $400,000.00 worth of the plaintiff's preferred stock by the Reconstruction Finance Corporation and the purpose of such purchase are of no materiality in this suit; and, not being informed with respect to the truth or falsity of such allegations, do deny the same. [150]

XVI.

Answering paragraph XVI, defendants deny that the valuation of the Pima County Assessor was excessive or illegal as alleged in said paragraph or at all.

XVII.

Answering paragraph XVII, defendants admit that the County Assessor of Graham County as-

sessed the shares of stock of the plaintiff in said county by placing a valuation thereon in the sum of $22,470.00 and that said amount was equal to the valuation of the tangible real and personal property of the said bank in said county; deny that there is any ambiguity about the assessment of the Graham County Assessor, and in that behalf allege that the said assessment was on the plaintiff's common capital stock and not upon plaintiff's preferred stock and was in accordance with the last sentence of Section 3071 of the Revised Code of Arizona, 1928.

Defendants represent that the allegations with respect to the purchase of $840,000.00 worth of the plaintiff's preferred stock by the Reconstruction Finance Corporation and the purposes of such purchase are of no materiality in this suit, and not being informed with respect to the truth or falsity of such allegations, deny the same.

And defendants deny that the valuation of the said Graham County Assessor was or is excessive or illegal in the manner set forth in said paragraph or at all.

XVIII.

Admit the allegations of paragraph XVIII. [151]

XVIII.

Answering paragraph XVIII, defendants deny that there should be deducted from the valuation placed by the Gila County Assessor on plaintiff's

common stock one-fourth thereof or that the said valuation should be reduced in any sum whatever.

XIX.

Defendants admit the allegations of paragraph XIX.

XX.

Defendants admit the allegations of paragraph XX.

XXI.

Answering paragraph XXI, defendants admit that the plaintiff filed a protest with respect to the valuations therein mentioned and appeared before the State Board of Equalization and urged correction and reduction of said valuations, but deny that the protest covered all the complaints against said valuations found in the plaintiff's bill; admit that the said Board of Equalization heard the plaintiff and refused and denied any relief to the plaintiff.

XXII.

Answering paragraph XXII, defendants admit that the State Board of Equalization ordered a reduction of 25% of the valuation of the plaintiff's shares in Maricopa County.

XXIII.

Answering paragraph XXIII, defendants admit that the valuations as determined by the State Board of Equalization are correctly set up in said paragraph but deny that the plaintiff bank was discriminated against in any way by the said State

Board of Equalization; deny that said Board was without authority to increase the valuation of the plaintiff's shares of stock in Yavapai County; deny that any part [152] of said valuations constituted an assessment upon plaintiff's preferred stock.

XXIV.

Answering paragraph XXIV, defendants admit that the valuations as set up therein were extended to the tax rolls of the several counties therein mentioned but deny that the said valuations are excessive, illegal or void for the reasons set forth in said paragraph or for any reasons whatever.

XXV.

Answering paragraph XXV, defendants admit the allegations of paragraph XXV, and in that behalf allege that the taxes therein mentioned were levied by the respective counties upon the plaintiff's common capital stock and were not levied upon plaintiff's preferred stock, and that they were and are legal and valid.

XXVI.

These defendants admit the allegations of paragraph XXVI except that any part of the taxes was illegal or void and this the defendants deny.

XXVII.

Answering paragraph XXVII, defendants admit the tenders therein alleged; represent that the allegations of the method employed by the plaintiff in arriving at what it deemed to be the correct valua-

tions of the taxes are immaterial; have no knowledge with respect thereto and therefore deny the same; deny that the capital stock of the plaintiff was taxed differently from the capital stock of other banks in Arizona and deny that any part of the taxes levied upon [153] plaintiff's common capital stock was based on the plaintiff's preferred stock, and deny that the percentages assigned to the several counties as alleged in said paragraph were correct.

XXVIII.

Defendants admit the allegations of paragraph XXVIII.

XXIX.

Answering paragraph XXIX these defendants represent to the Court that the allegations of this paragraph are of sections of the Arizona statutes of which this Court takes judicial notice.

XXX.

Answering paragraph XXX defendants admit that the 1936 taxes became payable November 4, 1936, that the plaintiff in that year and since then has owned real estate in all the counties which are defendants to this suit except Yavapai, that many of the owners of plaintiff's shares of stock owned in 1936 and continue to own real estate in one or more of said counties and that the taxes against said shareholders are liens on their real estate, and admit that the shares of stock in plaintiff became subject to seizure and sale for said taxes as provided by the laws of Arizona; that these defendants are

not and have not been advised of what the plaintiff can safely do with respect to transferring shares of its stock or paying dividends thereon or what the plaintiff has actually done since this suit was instituted and therefore deny the allegations that the plaintiff cannot so proceed with safety.

Deny that there was any ambiguity in the assess-
[154] ments made in Pima and Graham Counties and repeat the allegations that said assessments were against the plaintiff's shares of common capital stock.

Admit the stipulation alleged in said paragraph and that the County Treasurer of Pima County did on or about April 10, 1939 give notice that he would proceed to collect taxes assessed in his county against plaintiff's shares of common capital stock.

XXXI.

Answering paragraph XXXI, defendants request the Court to take judicial knowledge of Section 3065 of the Revised Code of Arizona, 1928, and all other constitutional and statutory provisions of that State.

Defendants deny that the remedy provided by said Section 3065 was not available to the plaintiff for the reasons set forth in said paragraph XXXI or for any other reasons;

And in that behalf defendants represent to this Court that the procedure prescribed by said Section 3065 was open and available to the plaintiff and that this Court of equity should not entertain a petition

to enjoin the collection of taxes due to the State of Arizona and the counties defendant hereto for the year 1936.

And defendants represent unto this Court that the plaintiff was bound to employ the method set forth in said Section 3065 and that if so it be that said method is judicial in character, the same was available to the plaintiff not only in the Superior Courts of the State of Arizona but also, by appropriate removal proceedings, in the United States [155] District Court for the District of Arizona, where all of said proceedings could and would have been consolidated or considered and heard together.

XXXII.

Answering paragraph XXXII, defendants represent unto the Court that the allegations thereof, with the exception of the last paragraph, are of sections of the Arizona statutes of which this Court takes judicial notice; that the said allegations are purely argumentative and immaterial for the reason that, as set forth in paragraph XXXIII of plaintiff's bill, the Supreme Court of the State of Arizona has held in the case of Maricopa County v. Hodgin, 46 Ariz. 247, that the taxpayer may bring an action against the county to recover taxes illegally paid, and secure judgment against and payment from said county, notwithstanding the fact that the county authorities had distributed the taxes as collected to the State and municipal authorities.

XXXIII.

Answering paragraph XXXIII, defendants represent to the Court that the reference to the decision of the Supreme Court of Arizona in said paragraph is to said case of Maricopa County v. Hodgin, of which this Court takes judicial notice; that the judgment allowable in an action by a taxpayer against a county is on the same basis as any other judgment against said county and of equal validity.

These defendants deny that the remedies given by the laws of the State of Arizona and particularly Section 3065 and Section 55, Chapter 103 of the Session Laws of 1931, are inadequate. [156]

These defendants represent to the Court that the argument of the plaintiff with respect to the operation of the budget law upon the collection of taxes is immaterial; that if it were accepted no judgment against the county would ever be paid in full; that in truth and in fact under the laws of the State of Arizona all judgments against the defendant counties have been and are promptly paid in full.

And these defendants deny that if the plaintiff had paid its taxes as levied and assessed against its common capital stock in the several counties defendant to this suit, and had secured judgments either under Section 3065 of the 1928 Code or Section 55, Chapter 103 of the Session Laws of 1931, they would not have been promptly paid in full.

Defendants represent that the allegations with respect to the operation of the budget laws of Arizona and the right to proceed against the counties for taxes allegedly illegally collected and the necessity for maintaining more than one suit are of sections of the Arizona statutes of which the Court takes judicial notice; defendants deny that the relief afforded by the provisions of the Arizona law would require a multiplicity of suits by plaintiff or any more suits than would be required of any taxpayer owning property in more than one county and deny that more than one action by plaintiff under Section 55, Chapter 103, Session Laws of 1931 would be necessary.

XXXIV.

Answering paragraph XXXIV, defendants admit that the taxing officials of Pima and Graham Counties take the position that they have the right to value plaintiff's [157] shares of taxable stock in each of such counties at an amount not less than the actual cash value of the real and tangible personal property of the plaintiff situated in their respective counties; deny that said officials of said counties will or do assert that the valuation of plaintiff's preferred stock must be apportioned to Maricopa County; and in that behalf defendants allege that the taxing authorities of said two counties take the position that whenever the valuation of the taxable shares of a bank having branches in several counties as apportioned on the basis of

assets is less than the value of the real and tangible personal property of the bank situated in such county, the value of the taxable stock in such county is increased to the extent of the difference.

Defendants represent that the allegations with respect to an action brought by plaintiff against the several counties defendant hereto as well as other counties for taxes collected from the plaintiff for the year 1937, which was a single action against all of said counties under Section 55, Chapter 103, Session Laws of 1931, and the opinion of the trial court in said action and the attitude of the Supreme Court of Arizona on the availability of certain sections of the Arizona statutes for the recovery of illegally collected taxes are immaterial; and in that behalf defendants represent to the Court that the plaintiff takes the position in said action that Section 3065 is not exclusive under the circumstances of said action and that the remedy by Section 55, Chapter 103, Arizona Session Laws of 1931, is available. [158]

XXXV.

Defendants deny the allegations of paragraph XXXV.

XXXVI.

Defendants deny the allegations of paragraph XXXVI.

XXXVII.

Defendants deny the allegations of paragraph XXXVII.

XXXVIII.

Defendants deny the allegations of paragraph XXXVIII.

XXXIX.

Answering paragraph XXXIX, defendants deny that any part of the taxes mentioned in plaintiff's bill is against the preferred stock of the plaintiff; defendants represent that the sections of the statutes of Arizona and the Act of Congress mentioned in said paragraph are matters of which this Court takes judicial notice; defendants deny that they or any of them have intentionally imposed taxes upon the plaintiff's common shares of stock at a greater rate than those imposed on the common stock of other banks in the State of Arizona, and deny that the taxes upon plaintiff's shares of stock are in violation of Section 1, Article IX of the Constitution of Arizona or Section 548, Title 12, United States Code Annotated.

XL.

Answering paragraph XL defendants represent to the Court that the matters therein contained are not alle- [159] gations of fact and need no denial.

XLI.

And for separate defense, defendants allege that the plaintiff in this action had available to it by the laws of the State of Arizona an administrative remedy, to-wit, that provided by Sections 3056-3062 inclusive, Arizona Revised Code of 1928, where-

in the State Tax Commission of Arizona had full authority to determine the proper valuation to be fixed upon the plaintiff's taxable shares of stock in the several counties in which it was operating in the year 1936 and to settle and determine any and all questions of apportionment of the valuation of plaintiff's taxable stock among such counties; that the plaintiff did not avail itself of such remedy prior to the institution of this suit, or at all.

XLII.

And for separate defense, defendants allege that action taken by the plaintiff before the State Board of Equalization constituted a proceeding under Section 3063, Arizona Revised Code of 1928, and plaintiff, if dissatisfied with the amount of its assessment as fixed by the said Board, had the remedy of appeal therefrom pursuant to the provisions of Section 3065 of the Arizona Revised Code of 1928; that the plaintiff did not avail itself of the remedy therein provided prior to the institution of this suit, or at all.

XLIII.

And for separate defense, defendants allege that if said Section 3065, mentioned in the preceding paragraph of this answer, be held to be judicial in character, as al- [160] leged by the plaintiff, it did afford to the plaintiff a full, complete and adequate remedy available not only in the Courts of the State of Arizona but of the United States District Court for the District of Arizona by removal to the law side thereof.

XLIV.

And for separate defense, defendants allege that Section 55, Chapter 103, Session laws of 1931, did afford to the plaintiff herein a plain, adequate and speedy remedy at law both in the Courts of the State of Arizona and in the United States District Court for the District of Arizona on the law side thereof.

XLV.

And for separate defense, defendants allege that under and pursuant to the laws of the State of Arizona in effect in 1936 and at the present time all taxes become a lien against the taxed property as of January 1 of the taxable year; that prior to the passage of the Act of Congress of March 20, 1936 (see 12 U. S. C. A., Section 51 d) in and by which the Congress of the United States undertook to retroactively destroy the lien of state taxes on preferred stock of national banks, the taxes of which the plaintiff complains had become a lien on the taxable shares of the plaintiff's stock; that if in truth and in fact any part of the taxes were levied against the plaintiff's preferred stock, which these defendants deny, the said Act of Congress was unconstitutional and void in that it deprives the State of Arizona and the counties thereof of their property without due process of law contrary to the Fifth Amendment to the Constitution of the United States. [161]

XLVI.

And for separate defense, defendants allege that said Act of Congress, insofar as it purports to operate retroactively upon the rights of the State of Arizona and the defendant counties to collect taxes for the year 1936, for the payment of which a lien had attached under and pursuant to the laws of the State of Arizona, is the attempted exercise of a power not delegated to the United States by the Constitution of the United States and not prohibited to the State of Arizona and it violates the Tenth Amendment to said Constitution.

XLVII.

For separate defense, defendants allege that said Act of Congress of March 20, 1936 is unconstitutional and void in that the Congress of the United States was without power or authority to annul and destroy property rights lawfully and validly accrued to the State of Arizona in the exercise of its power of taxation to raise revenues for state and county purposes and the attempt so to do by said Act of Congress constitutes an invasion of the sovereign rights of the State of Arizona.

Wherefore, these defendants pray that the plaintiff take nothing by its suit and that they have their costs and such other relief as may be meet and just.

JOE CONWAY
Attorney General, State of Arizona
W. E. POLLEY
Assistant Attorney General

[162]

RICHARD F. HARLESS
County Attorney, Maricopa County
LESLIE C. HARDY
Deputy County Attorney, Maricopa County
CHAS. ROGERS
County Attorney, Graham County
CHARLES L. EWING
County Attorney, Yavapai County
EDWARD Y. WEEKS
County Attorney, Gila County
J. MERCER JOHNSON
County Attorney, Pima County
CONNER & JONES
By: GERALD JONES
Special Attorneys for Pima County, Arizona
303-6 Valley National Building, Tucson, Arizona

[Endorsed]: Service accepted this 24 day of September, 1940. Gust, Rosenfeld, Divelbess, Robinette & Coolidge, Attorneys for Plaintiff.

[Endorsed]: Filed Sept. 24, 1940. Edward W. Scruggs, Clerk, United States District Court for the District of Arizona. By Gwen J. Ballard, Deputy Clerk. [163]

[Title of District Court and Cause—E-333, E-350.]

MINUTE ENTRY OF FRIDAY, NOVEMBER 29, 1940

(Phoenix Division)

These cases come on regularly for trial this day, before the Court sitting without a jury.

John L. Gust, Esquire, Harold Divelbess, Esquire, and Charles Rawlins, Esquire, appear as counsel for the plaintiff. Leslie Hardy, Esquire, appears as counsel for defendant Maricopa County, Arizona; Gerald Jones, Esquire, and J. M. Johnson, Esquire, appear as counsel for defendant Pima County, Arizona; Charles L. Ewing, Esquire, appears as counsel for defendant Yavapai County, Arizona; Charles Rogers, Esquire, appears as counsel for defendant Graham County, Arizona; and Earl Anderson, Esquire, appears as counsel for defendants State Tax Commission, etc., and specially for defendant Mojave County, Arizona.

On motion of Gerald Jones, Esquire,

It Is Ordered that Frank E. Tippett, Esquire, be admitted to practice specially herein, and entered as associate counsel for defendant Gila County.

On motion of John L. Gust, Esquire,

It Is Ordered that these cases be consolidated for trial.

On motion of Gerald Jones, Esquire,

It Is Ordered that these cases be consolidated for the purpose of appeal.

Both sides announce ready for trial.

Plaintiff's Case:

The following plaintiff's exhibits are now admitted in evidence:

1. Articles of Incorporation of Valley National Bank.
2. Protest, 1935.
3. Protest, 1936.
4. Statement, 1935.
5. Statement, 1936. [164]

The following witnesses are now duly sworn and examined on behalf of the plaintiff:

James Dismuke

Walter Bimson

Joseph E. Refsnes

Jim D. Brush is now duly sworn and cross-examined by counsel for the plaintiff.

The following plaintiff's exhibits are now admitted in evidence:

6. Copy of tax assessment, 1935, Maricopa County.
7. Copy of tax assessment, 1936, Maricopa County.

Leo J. Finch is now duly sworn and cross-examined by counsel for the plaintiff.

The following plaintiff's exhibits are now admitted in evidence:

8. Copy of Tax Assessment list, 1935, Pima county.
9. Copy of tax assessment list, 1936, Pima County.

10. Copy of tax assessment list, 1936, Yavapai County, in Case No. E-350, only.

N. Letter.

12. Copy of tax assessment list, 1936, Gila County, in Case No. E-350, only.

13. Copy of tax assessment list, 1935, Graham County, in Case No. E-350, only.

14. Copy of tax assessment list, 1936, Graham County, in Case No. E-350, only.

15. Copy of Protest, 1935, in Case No. E-350, only.

16. Copy of Protest, 1936, in Case No. E-350, only.

And thereupon, at the hour of 12:00 o'clock noon, It Is Ordered that the further trial of this case be continued until two o'clock p. m., this day, to which time the respective counsel are excused.

Subsequently, at the hour of two o'clock p. m., respective counsel being present pursuant to recess, further proceedings of trial are had as follows:

Plaintiff's Case Continued:

The following witnesses are now duly sworn and cross-examined by counsel for the plaintiff:

D. C. O'Neil

Thad M. Moore

Alvin Goodman

Jim D. Brush, heretofore sworn, is now recalled and further cross-examined by counsel for the plaintiff.

The following plaintiff's exhibits are now admitted in evidence:

17. Copy of tax assessment list, 1936, Maricopa County

18. Copy of delinquent tax list [165]

George Erhardt is now duly sworn and cross-examined by counsel for the plaintiff.

G. C. Taylor is now duly sworn and examined on behalf of the plaintiff.

J. B. Meade is now duly sworn and cross-examined by counsel for the plaintiff.

Plaintiff's Exhibit 19, Letter and Abstract of Record in Case No. 4342, The Valley National Bank, vs. Apache County, et al, Supreme Court of State of Arizona, is now admitted in evidence.

C. A. Tinker is now sworn and examined on behalf of the plaintiff.

William C. Fitts, Esquire, now makes a statement for the information of the Court on behalf of the Reconstruction Finance Corporation.

Whereupon, the plaintiff rests.

Defendants' Case:

The following Defendants' exhibits are now admitted in evidence:

A. Copy of Minutes of Board of Equalization, dated June 3, 1935.

B. Objection to Assessment, dated June 3, 1936.

And, the defendants rest.

Both sides rest.

It Is Ordered that this case be submitted and by the Court taken under advisement, and

It Is Ordered that the plaintiff be allowed twenty (20) days from the date the Reporter's transcript of this trial is filed in which to file its brief; that the defendant be allowed twenty (20) days thereafter in which to answer; and that the plaintiff be allowed ten 10) days thereafter in which to reply. [166]

[Title of District Court and Cause—E-333, E-350.]

MINUTE ENTRY OF FRIDAY, JUNE 13, 1941

This case having been submitted and by the Court taken under advisement,

It Is Ordered that judgment be entered for the plaintiff. [167]

[Title of District Court and Cause—E-333, E-350.]

ORDER DIRECTING SUBSTITUTION OF PARTIES DEFENDANT, UPON STIPULATION.

Upon stipulations of counsel for the respective parties, on file herein,

It Is Ordered that Jake Linville be substituted for Harry M. Moore, as County Treasurer and Ex Officio Tax Collector of Maricopa County, as a party defendant hereto, and that Charles H. Fields be substituted for C. W. Peterson, as a member of the Board of Supervisors of Maricopa County, as a party defendant hereto, and that when said sub-

stitutions are made the officers representing Maricopa County as parties defendant to this cause will be as follows:

Jake Linville, as County Treasurer and Ex Officio Tax Collector of Maricopa County, Arizona

J. D. Brush, as County Assessor of Maricopa County, Arizona, and

John A. Foote, Geo. Frye and Charles H. Fields, as members of and constituting the Board of Supervisors and County Board of Equalization of Maricopa County, Arizona.

It Is Further Ordered that Thomas Collins be substituted for Warren A. Grossetta, as a member of the Board of Supervisors of Pima County, Arizona, and that when said substitution is made, the officers representing Pima County as parties defendant to this cause, will be as follows:

Walter S. Bransford, as County Treasurer and Ex Officio Tax Collector of Pima County, Arizona,

Charles M. Taylor, as County Assessor of Pima County, Arizona,

R. H. Martin, J. B. Mead and Thomas Collins as Members of and constituting the Board of Supervisors and County Board of Equalization of Pima County, Arizona.

It Is Further Ordered that Earl M. Lines be substituted for Charles M. Geitz, as County Treasurer and Ex Officio Tax Collector of Graham County,

Arizona, and M. E. Dubois and M. M. Larson be substituted for J. W. Greenhalgh [168] and Virgil McEuen, as members of the Board of Supervisors of Graham County, Arizona, and that when said substitutions are made, the officers representing Graham County as parties defendant to said cause, will be as follows:

Earl M. Lines, as County Treasurer and Ex-Officio Tax Collector of Graham County, Arizona,

Alvin Goodman, as County Assessor of Graham County, and

M. E. Dubois, M. M. Larson and Glen Hoopes, as members of and constituting the Board of Supervisors, and County Board of Equalization of Graham County, Arizona.

Dated this 26 day of June, 1941.

DAVE W. LING
Judge of the District Court

[Title of District Court and Cause—E-333.]

Petition of defendants to Extend Time for Filing Objections and Exceptions to Proposed Findings of Fact and Conclusions of Law and to Proposed Judgment Enjoining Collections of Taxes having been presented to the Court, the following order is now entered:

ORDER

Upon reading and considering the foregoing petition,

It Is Ordered that the time for the defendants, and each of them, to file their objections and exceptions to the proposed findings of fact and conclusions of law, and the proposed judgment enjoining collection of taxes, now lodged with the Clerk of this Court, is hereby extended to and including September 15, 1941.

Dated this 26 day of June, 1941.

DAVE W. LING,
Judge [169]

[Title of District Court and Cause—E-350.]

ORDER DIRECTING SUBSTITUTION OF PARTIES DEFENDANT, UPON STIPULATION.

Upon stipulation of counsel for the respective parties, on file herein,

It Is Ordered that Jake Linville be substituted for Harry M. Moore, as County Treasurer and Ex-Officio Tax Collector of Maricopa County, as a party defendant hereto, and that Charles H. Fields be substituted for C. W. Peterson, as a member of the Board of Supervisors of Maricopa County, as a party defendant hereto, and that when said substitutions are made the officers representing Maricopa County as parties defendant to this cause will be as follows:

Jake Linville, as County Treasurer and Ex-

Officio Tax Collector of Maricopa County, Arizona,

J. D. Brush, as County Assessor of Maricopa County, Arizona, and

John A. Foote, Geo. Frye and Charles H. Fields, as Members of and constituting the Board of Supervisors and County Board of Equalization of Maricopa County, Arizona.

It Is Further Ordered that Thomas Collins be substituted for Warren A. Grossetta, as a member of the Board of Supervisors of Pima County, Arizona, and that when said substitution is made, the officers representing Pima County as parties defendant to this cause, will be as follows:

Walter S. Bransford, as County Treasurer and Ex-Officio Tax Collector of Pima County, Arizona,

Charles M. Taylor, as County Assessor of Pima County, Arizona,

R. H. Martin, J. B. Mead and Thomas Collins, as members of and constituting the Board of Supervisors and County Board of Equalization of Pima County, Arizona.

It Is Further Ordered that Earl M. Lines be substituted for Charles Geitz, as County Treasurer and Ex-Officio Tax Collector of Graham County, Arizona, and M. E. Dubois and M. M. Larson be substituted for J. W. Greenhalgh and Virgil McEuen, as members of the Board of Supervisors of Graham County, [170] Arizona, and that when said substitutions are made, the officers representing

Graham County as parties defendant to said cause, will be as follows:

Earl M. Lines, as County Treasurer and Ex-Officio Tax Collector of Graham County, Arizona,

Alvin Goodman, as County Assessor of Graham County, and

M. E. Dubois, M. M. Larson and Glen Hoopes, as members of and constituting the Board of Supervisors, and County Board of Equalization of Graham County, Arizona.

It Is Further Ordered that Harry Marshall be substituted for David H. Biles, as County Treasurer and Ex-Officio Tax Collector of Yavapai County and David H. Biles be substituted for C. H. Riebeling, as County Assessor of Yavapai County, and that Ralph G. Reid be substituted for T. B. Jones, as a member of the Board of Supervisors of Yavapai County, Arizona, as parties defendant, and that when said substitutions are made, the officers representing Yavapai County as parties defendant to said cause, will be as follows:

Harry Marshall, as County Treasurer and Ex-Officio Tax Collector of Yavapai County, Arizona,

David H. Biles, as County Assessor of Yavapai County, Arizona, and

W. M. Byers, Ralph G. Reid and C. C. Jackson, as members of and constituting the Board of Supervisors, and County Board of Equalization of Yavapai County, Arizona.

It Is Further Ordered that Cyril Kennedy be substituted for Frank H. Thomas, as County Treasurer and Ex-Officio Tax Collector of Gila County, Arizona, and Margarite T. Harding be substituted for W. G. Duncan, as County Assessor of Gila County, Arizona, and that when said substitutions are made, the officers representing Gila County as parties defendant to said cause, will be as follows:

Cyril Kennedy, as County Treasurer and Ex-Officio Tax Collector of Gila County, Arizona,

Margarite T. Harding, as County Assessor of Gila County, Arizona, and

John H. Armer, Charles Curnow and L. F. Quinn, as members of and constituting the Board of Supervisors and County Board of Equalization of Gila County, Arizona.

It Is Further Ordered that C. W. Peterson be substituted for [171] Frank Luke, as a member of the State Tax Commission and the State Board of Equalization of the State of Arizona, and that when said substitution is made, the officers representing the State of Arizona as parties defendant to said cause, will be as follows:

Thad M. Moore, D. C. O'Neil and C. W. Peterson, as Members of and Constituting the State Tax Commission and the State Board of Equalization of the State of Arizona.

Dated this 26 day of June, 1941.

DAVE W. LING,
Judge of the District Court.

[Title of District Court and Cause.—E-350.]

Petition of defendants to Extend Time for Filing Objections and Exceptions to Proposed Findings of Fact and Conclusions of Law and to Proposed Judgment Enjoining Collections of Taxes having been presented to the Court, the following order is now entered:

ORDER

Upon reading and considering the foregoing petition,

It Is Ordered that the time for the defendants, and each of them, to file their objections and exceptions to the proposed findings of fact and conclusions of law, and the proposed judgment enjoining collection of taxes now lodged with the Clerk of this Court, is hereby extended to and including September 15, 1941.

Dated this 26 day of June, 1941.

DAVE W. LING,
Judge [172]

[Title of District Court and Cause—E-333.]

MINUTE ENTRY OF WEDNESDAY, OCTOBER 8, 1941

It is ordered that the objections of Maricopa County, Arizona, et al, and of Pima County, Arizona, et al, to Plaintiff's Proposed Findings of Fact and Conclusions of Law be, and they are hereby overruled.

It is further ordered that Plaintiff's Proposed Findings of Fact and Conclusions of Law and suggested amendments thereto be, and they are hereby adopted.

It is further ordered that the form of judgment for Plaintiff heretofore proposed, as now amended, be filed, entered and spread on the minutes as the judgment in this case, as follows:

[Title of District Court and Cause—E-333.]

JUDGMENT ENJOINING COLLECTION OF TAXES

This cause came on regularly for trial on the 29th day of November, 1940, before the Honorable Dave W. Ling, Judge of the District Court of the United States for the District of Arizona, a jury having been waived by all parties to said cause. Evidence having been received and the trial concluded on said date, the case was submitted to the court for its consideration by counsel for the respective parties.

The court, after due consideraton having found the issues in favor of plaintiff and Findings of Fact and Conclusions of Law having been signed by the court and filed herein;

It is ordered, adjudged and decreed that the following taxes for the tax year of 1935, were legally levied against the holders of the shares of common stock of the plaintiff and were payable by the plaintiff as and for state, county, school district and other local taxes (except City of Phoenix taxes) and were collectible by the respective County

Treasurers of said counties from the plaintiff as follows:

Maricopa County	$17,938.09
Pima County	8,637.30
Graham County	808.58
Mohave County	298.78

[173]

That all other and further taxes levied or assessed or attempted to be levied and assessed as state, county, school district and other local taxes (except City of Phoenix taxes) in the above named counties for the year 1935, upon plaintiff's shares of stock or as payable by plaintiff were and are illegal and void.

That in pursuance of a stipulation entered into by the plaintiff with the respective County Treasurers, who are parties to this suit, approved by the order of this court in this cause, all of the above mentioned taxes found to be legal and valid have been paid by the plaintiff to the respective County Treasurers and that by such payment all state, county, school district and other local taxes collectible from plaintiff by the County Treasurers of the above named counties (except City of Phoenix taxes) have been fully paid; that the defendants hereto have no legal right, power or authority to levy or cause to be levied any further taxes against the plaintiff or its shareholders payable in the aforesaid counties as and for taxes for the year 1935.

It is further ordered, adjudged and decreed that the respective County Treasurers of the four counties herein named, their deputies, agents and servants be and they hereby are permanently restrained and enjoined from collecting any further moneys from the plaintiff or its shareholders as and for state, county, school district or other local taxes for the tax year 1935, (except City of Phoenix taxes) and that plaintiff have and recover from the defendants its costs herein incurred to be taxed by the Clerk of this court.

Done in open court this 8th day of October, 1941.

[174]

[Title of District Court and Cause—E-333.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This cause regularly having come on for trial upon plaintiff's second amended and supplemental bill of complaint and the joint and several answers of defendants to second amended and supplemental bill of complaint upon the 29th day of November, 1940, and the court having heard the evidence of the parties without a jury and the cause having been submitted for the consideration of the court by counsel for the respective parties, upon due consideration the court finds the following facts:

I.

That plaintiff is, and was at all times since the 11th day of February, 1935, a corporation, duly in-

corporated as a national banking association under the laws of the United States o f America, and authorized to do a banking business in the State of Arizona, having its principal banking house at Phoenix, Maricopa County, Arizona, and branches in other cities and towns in the County of Maricopa, and in cities and towns in the counties of Pima, Graham, Mohave, Gila, Greenlee, Pinal and Yavapai.

That plaintiff brings this suit in its own behalf and in behalf and as the agent of the holders of its common stock. [175]

That the defendants, Maricopa County, Pima County, Graham County, and Mohave County, each are and at all times herein mentioned, were duly organized and existing counties of the State of Arizona, and political subdivisions of said state;

That Harry M. Moore is a citizen and resident of Maricopa County, Arizona, and at the time of the filing of the original complaint in this cause, was the duly elected, qualified and acting County Treasurer and Ex Officio Tax Collector of said county; that after the filing of said original complaint he was succeeded in said office by Ed. Oglesby, a citizen and resident of said Maricopa County, and that said Ed. Oglesby was duly substituted in place of said Harry M. Moore as the duly elected, qualified and acting County Treasurer and Ex Officio Tax Collector of Maricopa County, and as such officer was a party defendant at the time of the trial and that thereafter on or about

the 4th day of January, 1941, W. H. Linville succeeded the said Ed. Oglesby as such County Treasurer and Ex Officio Tax Collector, and was regularly substituted as a party defendant hereto as such County Treasurer and Ex Officio Tax Collector;

That the defendant, J. D. Brush, is a citizen and resident of Maricopa County, Arizona, and is the duly elected, qualified and acting County Assessor of said County, and is sued herein as such officer;

That the defendants John A. Foote and Geo. Frye, are citizens and residents of Maricopa County, Arizona, and are now and at all times herein mentioned were duly elected, qualified and acting members of the Board of Supervisors of said Maricopa County and the County Board of Equalization of said county;

That at the time of the filing of the original complaint herein C. W. Peterson, a citizen and resident of Maricopa [176] County, Arizona, was the third member of said County Board of Supervisors and said County Board of Equalization and that said C. W. Peterson has been succeeded in said offices by Charles H. Fields, a citizen and resident of Maricopa County who has been regularly substituted for said C. W. Peterson as a party defendant to this suit as such officer;

That Daniel E. Garvey is a citizen and resident of Pima County, Arizona, and at the time of the filing of the original complaint in this cause, was the duly elected, qualified and acting county treas-

urer, and Ex Officio Tax Collector of said county; that since the filing of said original complaint, Wallace Bransford, a citizen and resident of Pima County, Arizona, has succeeded said Daniel E. Garvey as County Treasurer and Ex Officio Tax Collector of said county, and is sued herein as such officer, having been legally substituted as a party defendant in said cause in place of the said Daniel E. Garvey;

That the defendant Charles M. Taylor, is a citizen and resident of Pima County, Arizona, and is the duly elected, qualified and acting County Assessor of said county, and is sued herein as such officer.

That Warren A. Grossetta, R. H. Martin and J. B. Mead are citizens and residents of Pima County, Arizona, and at the time of the filing of the original complaint in this cause, were the duly elected, qualified and acting members of the Board of Supervisors of said Pima County and the Board of Equalization of said county;

That since the filing of the original complaint in this cause, Thomas Collins, a citizen and resident of Pima County, Arizona, has been duly elected a member of the Board of Supervisors of Pima County, Arizona, to succeed Warren A. Grossetta, and that said Thomas Collins, R. H. Martin and [177] J. B. Mead do now constitute the Board of Supervisors of Pima County, Arizona, and are sued herein as such officers, the said Thomas Collins having been substituted as a party defendant in place of Warren A. Grossetta;

That Charles M. Geitz was a citizen and resident of Graham County, Arizona, and was the duly elected, qualified and Acting County Treasurer and Ex Officio Tax Collector of said county at the time of the filing of the original complaint in this cause; that since the filing of the original complaint in this cause Earl M. Lines has succeeded the said Charles M. Geitz as the duly elected, qualified and acting County Treasurer and Ex Officio Tax Collector of said county and is sued herein as such officer, having been substituted as a party defendant in place of said Charles M. Geitz;

That the defendant, Alvin Goodman, is a citizen and resident of Graham County, Arizona, and is the duly elected, qualified and acting County Assessor of said county, and is sued herein as such officer;

That J. W. Greenhalgh, Glen Hoopes and Virgil McEuen, are citizens and residents of Graham County, Arizona, and at the time of the filing of the original complaint in this cause, were the duly elected, qualified and acting members of and constituted the Board of Supervisors of said Graham County, and the County Board of Equalization of said county;

That after the filing of the original complaint in this cause, Ernest D. Householder and M. E. Dubois, citizens and residents of Graham County, Arizona, succeeded J. W. Greenhalgh and Virgil McEuen as members of the Board of Supervisors of

said Graham County, and the said Glen Hoopes, Ernest D. Householder and M. E. Dubois thereafter constituted the Board of Supervisors of said Graham County and the Board of Equalization of said county, and were substituted as parties defendant in [178] the place of J. W. Greenhalgh and Virgil McEuen; and that thereafter M. M. Larson succeeded Ernest D. Householder as a member of said Board of Supervisors and said County Board of Equalization and thereupon said M. M. Larson was regularly substituted for said Ernest D. Householder as a party defendant to this suit as such officer;

That C. B. Tatum is a citizen and resident of Mohave County, Arizona, and at the time of the filing of the original complaint in this cause was the duly elected, qualified and acting County Treasurer and Ex Officio Tax Collector of said county; that since the filing of said original complaint he has been succeeded in said office by A. M. Cook, a citizen and resident of Mohave County, and that said A. M. Cook is now the duly elected, qualified and acting County Treasurer and Ex Officio Tax Collector of Mohave County, Arizona, and is sued herein as such officer, having been duly substituted as a party defendant in the place of said C. B. Tatum;

That the defendant, W. O. Ruggles is a citizen and resident of Mohave County, Arizona, and is the

duly elected, qualified and acting County Assessor of said county, and is sued herein as such officer;

That the defendants, F. L. Hunt, W. D. Lawe and E. T. Lyons are citizens and residents of Mohave County, Arizona, and at the time of the filing of the original complaint in this cause were the duly elected, qualified and acting members of the Board of Supervisors of said Mohave County, and the Board of Equalization of said county; that since the filing of the original complaint in this cause, William Mackie and George F. Moser, each a citizen and resident of Mohave County, Arizona, have been duly elected members of the Board of Supervisors of Mohave County, Arizona, to succeed F. L. Hunt and E. T. Lyons, and that said W. D. Lawe, William Mackie [179] and George F. Moser, do now constitute the Board of Supervisors of Mohave County, Arizona, and are sued herein as such officers, the said William Mackie and George F. Moser having been substituted as parties defendant in place of F. L. Hunt and E. T. Lyons.

That at the time of filing the original complaint herein, Frank Luke, Thad M. Moore and C. D. O'Neil were residents of Maricopa County, Arizona, and were the duly elected, qualified and acting members of and constituted the State Tax Commission and State Board of Equalization of the State of Arizona; that thereafter the said Frank Luke died and was succeeded as such tax commissioner and member of State Board of Equalization by C. W.

Peterson, who was thereupon regularly substituted as a party defendant hereto in place of said Frank Lake and that said C. W. Peterson is a citizen and resident of Maricopa County, Arizona, and is now a party to this suit as a member of the Tax Commission and State Board of Equalization of the State of Arizona.

That all of the successor parties hereto have adopted the acts of their predecessors which have relation to the collection of the taxes herein sought to be enjoined and continue the threats of their predecessors to enforce payment of said taxes.

II.

That this is a suit of a civil nature, in equity, arising under the Constitution and laws of the United States, and that the amount involved herein, exclusive of interest and costs, exceeds the sum or value of Three Thousand ($3,000.00) Dollars.

III.

That the plaintiff now exercises, and from and since the 11th day of February, 1935, has exercised in the City of [180] Phoenix, and the Cities of Glendale and Mesa, in Maricopa County, Arizona; in the city of Tucson, and the town of Ajo, in Pima County, Arizona, in the town of Safford, Graham County, Arizona, in the city of Kingman, Mohave County, Arizona, and in the cities of Globe and Miami, and town of Hayden, in Gila County, Ari-

zona, in the town of Clifton, Greenlee County, Arizona, in the towns of Superior, Coolidge and Casa Grande, in Pima County, Arizona, and in the city of Prescott, Yavapai County, Arizona, normal banking powers conferred upon it by law as a national banking association, including the receiving of commercial deposits, demand and time saving deposits, evidenced by certificates of deposit, the purchase and sale of government, state and municipal bonds, the maintenance of a trust department, the purchase and discount of commercial paper, the loaning of money on financial statements, and upon collateral security, and upon real estate and chattel mortgages executed to the plaintiff or assigned to and deposited with it as collateral security, and the investment of money in notes, bonds and mortgages and other securities, and evidences of indebtedness.

IV.

That it was and is provided by Section 1, of Article IX of the Constitution of the State of Arizona, that all taxes shall be uniform upon the same class of property within the territorial limits of the authority levying the tax.

That it was and is provided by Section 2, of Article IX of the Constitution of the State of Arizona, that there shall be exempt from taxation all federal, state, county and municipal property.

That it was and is provided by Section 3068, Revised Code of Arizona for 1928, that all taxable

property within said state must be assessed at its full cash value, and that [181] the term, "full cash value" shall mean the price for which property would sell if voluntarily offered for sale by the owner thereof upon such terms as such property is usually sold, and not the price that might be realized if such property were sold at a forced sale.

That it was and is provided by Section 3069, Revised Code of Arizona for 1928, as amended by Chapter 110, Session Laws of Arizona for 1931, that the property of corporations shall be assessed and taxed, and no assessment shall be made on shares of stock of corporations, nor shall any holder thereof be taxed for such shares, but that said provisions with reference to the taxing of shares of stock shall not apply to banking corporations, building and loan associations or corporations, and corporations or associations engaged in the business of using money wherewith to make money for the owners of their shares, and that the shares of stock of such banking corporations, and other corporations and associations shall be assessed and taxed as other property in the name of the shareholders of the several shares thereof, to be entered and taxed in the name of and be payable by such corporation or association.

V.

That it was and is provided by Section 11, of Article IX of the Constitution of Arizona, that the manner, method and mode of assessing, equalizing,

and levying taxes in the State of Arizona, shall be such as may be prescribed by law.

That it was and is provided by Section 3074, Revised Code of Arizona, 1928, that between the first Monday in January, and the first day of May, of each year, the County assessor, (excepting as otherwise required by the State Tax Commission) shall ascertain by diligent inquiry and examination all property in his county subject to taxation, the names of all persons owning, claiming, or having possession or control [182] thereof, determine the full cash value of all such property, and list and assess the same to the person owning, claiming or having the possession, charge, or control thereof.

That it was and is provided by Section 3070, Revised Code of Arizona for 1928, that upon the demand of the Assessor the officers in charge of any banking corporation or corporations or association engaged in the business of using money wherewith to make money, shall, make out and deliver to the assessor a sworn statement showing the number of shares, the name and residence of each shareholder, and the number of shares owned by him, the surplus, reserve fund and undivided profits, and the par and market value of the shares, and that the full cash value of such shares shall be ascertained according to the best information which the assessor may be able to obtain, whether from any return to any officer of the state or the United States, from actual sales of the stock, or from other trustworthy sources, and that every such shareholder shall, where

such corporation or association is located, render at their full cash value to the assessor all shares owned by him therein; and if the shareholder fail to do so the assessor shall list and assess such unrendered shares as other unrendered property, and that the taxes due thereon shall be paid by such corporation or association, and shall be a lien against and assessed to such shares of stock, and no such corporation or association shall pay any dividends to any shareholder who is in default in the payment of taxes due on his shares, nor shall it permit the transfer on its books of any shares the owner of which is in default in the payment of his taxes on the same.

That it was and is provided by Section 3071, Revised Code of Arizona for 1928, that every such corporation or association for the purpose of said assessment shall be con- [183] sidered as located in every county, city or town wherein it has an office for the purpose of carrying on its business, and the shares shall be subject to taxation in any county, city or town wherein it has such office, that the officer of such corporation or association shall state in his statement if his association or corporation is subject to taxation in more than one county, city or town, and the proportion of its assets situated in each thereof, and that the shares of such corporation or association shall be taxed in each county, city or town, for only such portion of their assets as the assets situated in that county, city or town bear to the assets of the entire corporation or asso-

ciation, and that when a bank maintains branches or conducts business in more than one county, city or town, the assessed value of the capital stock shall be apportioned among the several counties, cities and towns in which the main office or such branches are maintained or business conducted, and the amount apportioned to each county, city or town shall not be less than the actual cash value of the real and personal property of such bank situated in such county, city or town.

VI.

That on the 11th day of February, 1935, the day plaintiff engaged in the banking business as a national bank, and at all times thereafter until after the first Monday in May, 1935, the amount of its capital stock was $260,000.00, its surplus was $260,000.00, its undivided profits were $90,026.52, and its resources $89,000.00, making a total as the basis for the valuation of its shares of common capital stock of $699,026.52. That its common capital stock consisted of 52,000 shares, of the par value of $5.00 each. That to provide the plaintiff with sufficient capital to enable it to comply with the laws and regulations pertaining to national banks in the acquisition and [184] transaction of the banking business which it acquired on said 11th day of February, 1935, the Reconstruction Finance Corporation of the United States of America, purchased from the plaintiff, and the plaintiff sold to said Reconstruction Finance Corporation, $1,240,000.00 par

value of preferred stock. That said preferred stock so issued and sold to said Reconstruction Finance Corporation consisted of 198,400 shares of the par value of $6.25 each, and that all of said preferred stock was issued to said Reconstruction Finance Corporation, and said Reconstruction Finance Corporation paid to plaintiff therefor the par value thereof, on or prior to said 11th day of February, 1935, and ever since the issuance thereof said preferred stock has been and now is owned and held by and is the property of the Reconstruction Finance Corporation of the United States of America.

VII.

That after the 11th day of February, 1935, and prior to the first day of May, 1935, an officer of the plaintiff, duly authorized for said purpose, made and delivered a statement such as is provided for by Sections 3070 and 3071, Revised Code of Arizona for 1928, to each of the assessors of the respective counties in which its main office or any of its branches was and is situated, including all of the counties made parties defendant to this suit. That each of said statements showed the number of plaintiff's shares, the names and residences of each shareholder owning and holding the shares of its common stock and the shares of its preferred stock above mentioned, the number of shares owned by each shareholder, the amount of capital, surplus and undivided profits, as above stated, and the par value of its shares, both common and preferred, as is

required by Section 3071, Revised Code of Arizona, 1928. Each of said statements showed the proportion of plaintiff's [185] assets situated in each of the counties in which its principal office or a branch thereof was and is situated. That said statement showed the common capital stock of the plaintiff was $260,000.00, that its surplus was $260,000.00, that its undivided profits were $90,026.52, and that its reserves were $89,000.00, making a total as the basis for the valuation of its common capital stock of $699,026.52. That said statement also showed that the following percentages of said amount were properly apportioned to the respective counties, to-wit:

Maricopa County	54.57 per cent
Pima County	26.53 per cent
Graham County	2.34 per cent
Mohave County	1.37 per cent
Gila County	6.86 per cent
Greenlee County	3.32 per cent
Pinal County	3.22 per cent
Yavapai County	1.79 per cent

VIII.

That prior to the year 1934, it was the practice followed by the county assessors of the several counties of the state of Arizona, to value for tax purposes the shares of stock of each of the banks in the State of Arizona at an aggregate amount equal to the capital stock, surplus and undivided profits of each of said banks, as shown by the books of

said bank, and that in the year 1934, all or substantially all of the banks in the State of Arizona protested to the State Tax Commission of the State of Arizona, sitting as a Board of Equalization, against the valuation of their shares of stock on said basis, for the reason that the same constituted an assessment of the capital stock of said banks at its full cash value, when other classes of property in said state were assessed at an amount equal to 60% of their cash value, and that in the consideration of said protests, said State Tax Commission, sitting as a Board of Equalization, in the year 1934, made [186] a thorough examination of the valuation of shares of bank stock in the state of Arizona, and after such examination ordered that shares of bank stock should be valued by the following method: (1) That the statements filed by said banks should be revised and corrected by the use of the best information available; (2) That the shares of stock should be valued at 75% of the capital stock, surplus and undivided profits as shown by said revision of the banks statement. That said Tax Commission made no determination with reference to the taxability of shares of preferred stock of banks owned and held by Reconstruction Finance Corporation, and expressly left that question to be determined by the courts.

IX.

That the State Tax Commission of the State of Arizona, said Tax Commission consisting of the

same individuals as the State Board of Equalization, in the exercise of its supervisory powers over the county assessors of the State of Arizona, directed the county assessors of the State of Arizona to value for tax purposes for the year 1935, the shares of stock of all banks in the state at an amount equal to 75% of the capital stock, surplus and undivided profits of said banks, and that the county assessors of the several counties of the state, (except the county assessor of Mohave county) valued for tax purposes for the year 1935 the capital stock of all banks in their respective counties at an amount equal to 75% of the capital stock, surplus and undivided profits of said banks as shown by the books of said banks.

X.

That in the year 1934 the taxing officials of the State of Arizona, under the direction of the State Tax Commission and State Board of Equalization, for the purpose of equalizing the valuation of shares of bank stock with the valuation of [187] other kinds and classes of property, adopted the general plan or policy of assessing the stock of all banks at an amount equal to 75% of the book value of the stock as shown by the bank's statement after proper checking and inquiry satisfied them that the statement fairly reflected the bank's condition. That said general plan or policy was continued to the year 1939, or perhaps longer.

XI.

That the assessments of plaintiff's shares of stock in the Counties of Gila, Greenlee, Pinal and Yavapai, for the year 1935 were in accord with the aforesaid general plan or policy and were not contested by plaintiff.

XII.

That the County Assessor of Maricopa County arrived at the valuation to be placed upon plaintiff's shares of stock for tax purposes for the year 1935 by adding together the amount of the common capital stock, surplus, undivided profits and reserves shown by the statement filed by him as aforesaid, and adding to the amount so arrived at the sum of $1,240,000.00, being the par value of the preferred stock of plaintiff issued to and owned and held by the Reconstruction Finance Corporation, as hereinbefore alleged, the total so arrived at being the sum of $1,939,026.00. Said county assessor then took 54.57 per cent of said sum, (said 54.57% being the percentage shown by the statement filed with him by plaintiff as the percentage properly apportioned to Maricopa County), thus arriving at $1,058,126.77 as the amount apportioned to Maricopa County, and then computed 75% of said amount, making the sum of $793,595.08, which sum said assessor placed on the tax roll as the assessable value of plaintiff's shares of stock for tax purposes for the year 1935 in said Maricopa County. [188] That of the aforesaid valuation of $793,595.08, 54.57% of 75% of $1,240,000.00, or $507,501.00, was and is the valua-

tion placed by said county assessor upon Maricopa County's proportion of the shares of preferred stock of the plaintiff owned and held by the Reconstruction Finance Corporation. That said County assessor intended to and did assess plaintiff's shares of preferred stock owned and held by Reconstruction Finance Corporation at said amount of $507,501.00.

XIII.

That the county assessor of Pima County assessed the shares of stock of the plaintiff in said county by placing a valuation on the real and personal property owned and held by the plaintiff in said county as follows, to-wit:

"ASSESSED VALUATION OF VALLEY NATIONAL BANK OF ARIZONA, PIMA COUNTY

1935

Co-Apportionment—13,795.6 shares of stock @ $23.7459
Totalling $327,590.00

REAL ESTATE, IMPROVEMENTS & PERSONAL PROPERTY HOLDINGS OF VALLEY NATIONAL BANK OF ARIZONA, PIMA COUNTY.

1935

Description of Property	Lot	Blk	Real Estate Valuation	Imps. Valuation	Personal Prop. Valuation
Ajo	4	15	125		
Ajo	5	15	150	1405	785.00
Tucson S 62' of N 123.04' of W. 72.94' of Lot 3 10		208	13,020		
Tucson N 58' of W 64.73' of Lot 3 together with a 3' strip on S—sub 12		208	27,945	171130	110,000.00
Rincon Heights	13	8	110		
Rincon Heights	14	8	110	1370	

Description of Property	Lot	Blk	Real Estate Valuation	Imps. Valuation	Personal Prop. Valuation
S½SW¼SW¼SW¼ (3)	21-13-14	D-4	Acres 10		
		W-1	" 5		
E½SW¼ less parcel 1 & 5 (4)	26-13-14	D-58.81a	335		
					[189]
S½SE¼NW¼ & NW¼ SE¼NW¼ & E½SE¼ NW¼ (6)	27-13-14	P-20a	220		
		W-15a	15		
S½SW¼NW¼ (8)	27-13-14	P-17a	190	55	
		W-3a	5		
S½SW¼NW¼ (17)	27-13-14	1-5	115		
		W-15	15		
Part of N½ S½ of Sec 28 lying N of Rillito R (18)	28-13-14	D-25	75		
		W-31.3	30		
E½SW¼NW¼ 7 E½ NW¼SW¼NW¼ 7 E½SW¼SW¼NW¼ (23)	28-13-14	P-10	110		
		D-10	30		
		W-7.5	10		
S½S½SW¼NE¼ (28)	28-13-14	1-5	115		
		D-10	60		
E½ of SW¼NW¼NW¼ & E½NW¼NW¼NW¼ (42)	28-18-14	P-4.6	20		
		W-5.9	5		
		Total	$327,590.00		

Detail of Personal Property:

Bank Fixtures $110,000.

Bank Fixtures in Ajo 875."

XIV.

That it appears from the foregoing computation made by the county assessor of Pima County that the valuation arrived at by said county assessor in Pima County for the year 1935, was $327,590.00. That the assessment made by said assessor does not show whether said valuation was intended to be imposed upon the tangible real and personal property owned by plaintiff in said county, or upon plaintiff's common capital stock, or upon plaintiff's preferred stock. If said valuation is construed as imposed upon plaintiff's real and personal property, it is wholly void as unauthorized by the statutes of the state of Arizona, and if it is construed as imposed upon plaintiff's common stock, it amounts to a valuation of that portion of plaintiff's shares of common stock assessable in Pima county of approximately $6.30 per share, which is the equivalent of a total valuation of plaintiff's shares of common stock in all [190] counties of approximately $23.75 per share.

XV.

That the aforesaid valuation of the county assessor of Pima county was excessive and illegal to the extent following: The total of the common capital stock of $260,000.00, the surplus of $260,000.00, the undivided profits of $90,926.52, and the reserves of $89,000.00, is $699,026.52, which represents the shares of common capital stock of the plaintiff. Of this amount 26.53%, or the sum of $185,451.73 is properly apportioned to Pima county, representing that portion of plaintiff's shares of common stock

apportioned to Pima county. To make allowance for probable shrinkage in book assets, and the normal difference between the book value of assets and the actual value of the shares of stock and to equalize with valuation of other kinds and classes of property in accordance with the method prescribed by the State Tax Commission as aforesaid, one-fourth thereof, or the sum of $46,362.93 must be deducted, leaving the amount of $139,088.80 as the actual cash value for the year 1935, of that portion of plaintiff's shares of common stock which is assessable in Pima county; that the excess over said sum of $139,088.80 assessed against the shares of stock of plaintiff by the county assessor of Pima County which is the amount of $188,501.20, was assessed on account of valuations represented by plaintiff's preferred stock owned and held by the Reconstruction Finance Corporation.

XVI.

That the County Assessor of Graham County assessed the shares of stock of the plaintiff in said county by placing a valuation on the real and personal property owned and held by the plaintiff in said county as follows:

West 30 feet of Lot 1, Safford, Block 29:	
Value of Land	$ 2,250.00
Value of Improvements	14,615.00
	[191]
Lot 8, K & G, Block 2:	
Value of Land	$ 120.00
Summary of Values:	
Total personal property	$ 5,605.00
Total Real Estate	2,370.00
Total improvements	14,615.00
Total for County and State taxation	$22,590.00

That in addition to the foregoing, said Assessor assessed certain real estate acquired by the plaintiff in the year 1935, prior to the date that the above and foregoing assessment was made, from The Consolidated National Bank of Tucson, as follows:

Northwest Quarter ($NW^1/_4$) and West Half ($W^1/_2$) of the Northeast Quarter ($NE^1/_4$) and Northwest Quarter ($NW^1/_4$) of the Southeast Quarter ($SE^1/_4$) of Section 21, Township 6, Range 25:	
Acres	142
Class of Land	CU.
Value of Land	$4,050.00
Lots One (1) and Two (2), Section 21, Township 6, Range 25:	
Acres	50
Class of Land	CU.
Value of Land	$1,420.00
Value of Improvements	1,200.00
Consolidated National Bank:	
Acres	125
Class of Land	W.
Value of Land	$ 125.00
Total Real Estate	$5,595.00
Total Improvements	1,200.00
Total for County and State Taxes	$6,795.00

That all of the foregoing property of plaintiff assessed by said county assessor of Graham county was acquired by plaintiff on or prior to the 11th day of February, 1935, from The Valley Bank & Trust Company, a State Bank, and the Consolidated National Bank of Tucson, a National Banking Association, both of which institutions were actively engaged in transacting a banking business at and prior to the time when said property was transferred by them to the plaintiff and that all of said [192] property was included in the statement of capital, surplus, undivided profits and reserves filed by the plaintiff with said county assessor as aforesaid.

XVII.

That the total amount of the Assessment in Graham county, being the sum of $22,590.00, plus $6,795.00, or $29,385.00, as shown by the above tabulations, was arrived at by said county assessor by taking the assessable value of all of the real and personal property owned by the plaintiff in said county. That the assessment made by said assessor does not show whether said valuation was intended to be imposed upon the real and personal property owned by the plaintiff in said county, or whether it was intended to be imposed upon plaintiff's common capital stock or upon plaintiff's preferred stock. If construed as imposed upon the tangible real and personal property of plaintiff in said county, it is wholly unauthorized and void under the statutes of the State of Arizona. If it is construed as imposed upon plaintiff's common stock,

it amounts to a valuation of that portion of plaintiff's shares of common stock assessable in Graham county, of approximately .56¢ per share, which is the equivalent of a total valuation of plaintiff's shares of common stock in all counties of approximately $24.00 per share. That the aforesaid valuation by said county assessor of Graham county was and is excessive and illegal to the extent following: The total of the common capital stock of $260,000.00, the surplus of $260,000.00, and the undivided profits of $90,026.52, and the reserves of $89,000.00 which represents the shares of common capital stock of plaintiff, is $699,026.52. Of this amount, 2.34%, or $16,357.22, is properly apportioned to Graham county, representing that portion of plaintiff's shares of common stock apportioned to Graham county. From said sum must be deducted [193] one-fourth thereof, or the sum of $4,089.80 to make allowance for probable shrinkage in book assets and the normal difference between the book value of the assets and the actual value of the shares of stock, and to equalize with valuations of other kinds and classes of property, in accordance with the method prescribed by the State Tax Commission, as aforesaid, leaving the amount of $12,267.42 as the true valuation for tax purposes for the year 1935 of that portion of plaintiff's shares of common stock which is assessable in Graham county. That the valuation arrived at by the county assessor of Graham county in excess of said sum of $12,267.42, said excess being $17,117.58, was assessed upon values represented by preferred stock

of the plaintiff owned and held by the Reconstruction Finance Corporation.

XVIII.

That if the aforesaid assessments by the county assessors of Pima and Graham counties are construed as assessments and valuations of the property owned and held by the plaintiff in said counties as other property held by individuals and other corporations of said counties are assessed and valued, and assessments and valuations are wholly unauthorized and void for the reason that under the provisions of Section 3069, Revised Code of Arizona for 1928, and the decisions of the Supreme Court of Arizona construing said section, the property of banking associations or corporations engaged in the business of banking is not assessable or taxable, but only the shares of stock of such banking association or corporations are assessable and taxable.

That if the aforesaid assessments and valuations in Pima and Graham counties are construed as assessments and valuations of the shares of stock of the plaintiff, both common and preferred, and the taxes computed thereon payable by the holders [194] of the common and preferred stock, said assessments and valuations are wholly void for the reason that said shares of preferred stock being owned and held by the Reconstruction Finance Corporation of the United States, are wholly exempt from state, county and local taxation under the Constitution and laws of the United States, and

the Constitution and laws of the State of Arizona, and said assessments do not segregate the valuation placed upon the shares of common stock from the valuation placed upon the shares of preferred stock. That the shares of preferred stock of plaintiff are preferred both as to dividends and as to distribution of assets in case of liquidation, and are limited to participation in dividends and in distribution of assets in the event of liquidation, and that as a result of such preferences and limitations so conferred and imposed upon them, the relation of the actual value of said shares to the par value thereof is not the same as the relation of the actual value of the shares of common stock to the par value of said common shares.

That if the aforesaid assessments in Pima and Graham counties are construed as assessments and valuations of the shares of common stock of the plaintiff, and the taxes computed thereon payable wholly by the owners of said shares of common stock, then such assessments and valuations are wholly void, for the reason that the same are excessive, confiscatory and discriminatory, greatly in excess of the actual value of said common shares, and discriminatory between the holders of said shares of common stock and the holders of common shares of stock in other banks, and also between the holders of the shares of common stock in the plaintiff, and other classes of property assessed in said counties of Pima and Graham, and in said state of Arizona, for the following reasons:

1. That said assessments and valuations are void

and [195] confiscatory for the reason that in Pima county the sum of $188,501.20 of the total assessment of $327,590.00, and in Graham county the sum of $17,117.58 of the total assessment of $29,385.00, is assessed against said shares of common stock, not by reason of any assets represented by said shares of common stock, or by reason of any inherent value of said shares of common stock, but by reason of values represented by preferred stock of the plaintiff owned and held by the Reconstruction Finance Corporation.

2. That said assessments and valuations are excessive and confiscatory for the reason that said valuations of $327,590.00 in Pima county, if deemed the valuation placed upon the shares of common stock of plaintiff, is a valuation of approximately $23.75 per share, and said valuation of $29,385.00 in Graham county, if deemed a valuation placed upon the shares of common stock of plaintiff is a valuation of approximately $24.00 per share, when the book value of said shares of stock determined by the value of the assets of the plaintiff, as shown by plaintiff's books is approximately $13.50 per share, and the actual value of said shares of common stock as determined by actual sales made during the assessment period for the year 1935 is approximately $11.00 per share.

3. That the said assessments and valuations of $327,590.00 of Pima county, and of $29,385.00 in Graham county, if construed as assessments upon plaintiff's shares of common stock, are discriminatory against the holders of plaintiff's shares of

common stock and in favor of the holders of common stock in other banks in the state of Arizona, for the reason that the holders of the common stock in other banks (said banks as far as known to the plaintiff having issued no shares of preferred stock owned or held by the Reconstruction Finance Corporation), have been assessed and valued by the direction of the State [196] Tax Commission for tax purposes for the year 1935 at 75% of the capital stock, surplus and undivided profits of said banks, and that the holders of common stock of the plaintiff have been assessed for tax purposes in said two counties for the year 1935 at approximately twice the capital stock, surplus and undivided profits of the plaintiff.

4. That if said assessments and valuations of $327,590.00 in Pima county, and $29,385.00 in Graham county, are construed as assessments and valuations upon portions of plaintiff's common stock said assessments and valuations discriminate against the holders of the common stock of the plaintiff and in favor of the owners and holders of other classes of property in the state of Arizona, in that said shares of common stock of the plaintiff have been valued and assessed at approximately twice the actual value thereof, when other classes of property in the state of Arizona has not been assessed in excess of the cash value thereof.

5. That if said assessments and valuations are construed as assessments and valuations of the shares of common stock of plaintiff, said assessments and valuations discriminate against the own-

ers and holders of plaintiff's shares of common stock and in favor of the owners and holders of other moneyed capital in the state of Arizona, in violation of Section 548, Title 12 of United States Code Annotated, in that said shares of stock have been assessed at approximately twice their actual value, while other moneyed capital, particularly shares of capital stock of state banks, in the hands of individual citizens of the state of Arizona coming into competition with the business of national banks, has been assessed at not to exceed 75% of its actual cash value.

XIX.

That the County Assessor of Mohave County assessed the [197] shares of stock of the plaintiff as follows: He added together its common capital stock of $260,000.00, its surplus of $260,000.00, its undivided profits of $90,026.52, and its reserves of $89,000.00, making a total valuation of its shares of common stock of $699,026.52, and taking 1.37% thereof as the proper percentage for Mohave County, thus arriving at a calculation of $9,576.66, which said county assessor placed on the tax roll as the valuation of plaintiff's shares of stock for tax purposes for the year 1935 in his county; that said valuations so made by the county assessor of Mohave County resulted in a valuation of plaintiff's shares of common stock in that county at 100% of its book value when the shares of stock of all other banks in the state were equalized with the valuations of other kind and classes of prop-

erty at 75% of their book value, and further resulted in a valuation of said shares of stock at $13.34 per share when the market value thereof was not to exceed $11.00 per share.

XX.

That within the time provided by law plaintiff filed a written protest against the foregoing valuations of its shares of stock herein complained of with the County Board of Equalization in each of the counties of Maricopa, Pima, Graham and Mohave, being all of the counties in which the assessments and valuations of its shares of stock are complained of herein, and that within the time provided by law plaintiff appeared before the County Board of Equalization in each of said counties and urged the correction and reduction of said assessments in all respects herein complained of. That each of said County Boards of Equalization heard the plaintiff and refused and denied any relief to the plaintiff.

XXI.

That none of the aforesaid County Boards of Equalization [198] made any changes in the valuations made as aforesaid by the respective county assessors upon the shares of stock of the plaintiff, and the Clerk of each of said boards of supervisors, immediately after the July adjournment of said Boards of Equalization, transmitted to the State Board of Equalization the respective valuations made as aforesaid by the respective county assessors, which valuations were as follows, to-wit:

County	Valuation on Tax Roll
Maricopa	$793,593.08
Pima	327,590.00
Graham	29,385.00
Mohave	9,576.66

XXII.

That on or about the 7th day of August, 1935, the plaintiff filed a written protest with the defendants, Frank Luke, Thad M. Moore and D. C. O'Neil, sitting as a State Board of Equalization of the State of Arizona, protesting against the valuations of its shares of stock in Maricopa County, Pima County, Graham County and Mohave County, protesting against said valuations in all respects herein complained of, and on said 7th day of August, 1935, the plaintiff appeared before said Frank Luke, Thad M. Moore and D. C. O'Neil, sitting as a State Board of Equalization, and urged the correction and reduction of said valuations in all respects herein complained of. That said defendants, sitting as a Board of Equalization heard the plaintiff and denied plaintiff's protests and referred said protests to the State Tax Commission for further proof pending the outcome of certain suits pending in the Superior Courts of the State of Arizona.

XXIII.

That within the time provided by law the said State Board of Equalization fixed the rate of taxation to be levied for state purposes transmitted to

the Board of Supervisors of [199] each of the respective counties that are parties defendant to this suit, a statement of the changes which it had made in the assessment, (no change whatever having been made in the assessment of plaintiff's shares of stock) and the rate of taxes which was to be levied and collected within said county for state purposes; That each of said Board of Supervisors received said statement and ordered placed on the tax roll the respective valuations made by the respective county assessors as hereinabove alleged.

XXIV.

That after the completion of the valuation of plaintiff's shares of stock and the placing thereof on the tax rolls as aforesaid in the respective counties, the Board of Supervisors and the governing bodies of the cities and towns in each of said counties, (except the city of Phoenix, in Maricopa County), finally determined the estimates provided for by Section 3098 Revised Code of Arizona for 1928, and the school superintendents in said counties furnished to said Boards of Supervisors the estimates provided for by Section 1090, Revised Code of Arizona for 1928, and said Boards of Supervisors assessed taxes for the several amounts estimated as well as the state tax, at the rate fixed as aforesaid, upon the taxable property of the county and computed and carried out the real and personal taxes and total taxes of each person on said tax rolls, and computed at the proper tax

rates determined by the Board of Supervisors or the State Board of Equalization upon the aforesaid valuations, and entered upon the said tax rolls as taxes upon the shares of stock of the shareholders of the plaintiff, and as payable by the plaintiff, the following amounts, to-wit:

Maricopa	$49,810.86
Pima	20,362.98
Graham	1,894.88
Mohave	399.08

[200]

XXV.

That upon completion of the tax rolls for the year 1935, said tax rolls containing thereon the respective items of taxes set forth in Paragraph XXIV above, the Chairman of the Board of Supervisors of each of said counties, as prescribed by statute, annexed thereto under his hand, a warrant, commanding the County Treasurer and Ex-Officio Tax Collector to collect from the several persons named in said tax roll, including plaintiff, one-half of the taxes set opposite their respective names, including the illegal and void taxes, taxed, assessed and levied as aforesaid, on or before the first Monday in November, 1935, and the other one-half of said taxes on or before the first Monday in May, 1936. That said tax rolls, together with said warrants, were delivered to the respective county treasurers of said counties parties defendant hereto, in the manner and within the time provided by law.

XXVI.

That upon receipt of said assessment and tax rolls each of said county treasurers being parties defendant hereto, gave official notice specifying that one-half of said taxes, including the taxes sought to be enjoined in this suit, would be due and payable on the first Monday in September, 1935, and would become delinquent on the first Monday in November, 1935, at 5:00 o'clock p.m., and that the remaining one-half of said taxes would be due and payable on the first Monday in March, 1936, and would become delinquent on the first Monday in May, 1936, at 5:00 o'clock p.m., and that unless said taxes were paid prior to becoming delinquent, interest would accrue thereon from the time of such delinquency at the rate of ten per cent per annum until paid, or until said property or such part thereof as was necessary had been sold, and thereafter interest would accrue thereon at the rate provided in the tax certificates [201] issued covering the sale of said property, but not to exceed fifteen per cent per annum.

XXVII.

That before the first Monday in November, 1935, and before the filing of the bill of complaint, and during the regular office hours of the respective county treasurers who are parties defendant hereto, plaintiff tendered and offered to pay to each of said county treasurers the amount of taxes which plaintiff believes to be justly due and owing by the owners and holders of its shares of common

stock to said county treasurers for state, county and local taxes for the year 1935. The amounts which the plaintiff so tendered and offered to pay to each of said county treasurers are as follows:

Maricopa County	$17,938.09
Pima County	8,637.30
Graham County	808.58
Mohave County	298.78

That the amounts so above tendered as the amounts justly due and owing to the said county treasurers for taxes for the year 1935, were determined by computing the proper proportion of 75% of the book value as shown by plaintiff's statement, excluding, however, from said computation plaintiff's shares of preferred stock held by the Reconstruction Finance Corporation and the assets represented thereby. That is to say, plaintiff added together its common capital stock of $260,000.00, its surplus of $260,000.00, its undivided profits of $90,026.52, and its reserves of $89,000.00, making the sum of $699,026.52, and then took the proper percentage thereof apportioned to each of said counties, to-wit: Maricopa County 54.47 per cent, Pima County 26.53 per cent, Graham County, 2.34 per cent, Mohave County, 1.37 per cent, which gave the following figures: [202]

Maricopa County	$381,458.77
Pima County	185,451.73
Graham County	16,357.22
Mohave County	9,576.66

and then took 75% of each of said amounts, thus arriving at the actual cash value in each of said counties for plaintiff's shares of stock as follows:

Maricopa County	$286,094.08
Pima County	139,088.80
Graham County	12,267.91
Mohave County	7,182.50

and computed the tax at the respective rates as fixed in said counties by the proper authorities therein, thus arriving at the taxes in each of said counties at the amounts so tendered.

That the amount so tendered by plaintiff is the amount of taxes which would have been assessed against the shares of common capital stock in the several counties that are parties defendant hereto by the action of the assessing officials and State Board of Equalization if said taxing officials and said State Board of Equalization had applied the same basis of valuation to plaintiff's shares of common capital stock as they applied to the shares of other banks, state and national, doing business in the state of Arizona, and is likewise the amount that the taxing officials and State Board of Equalization would have assessed plaintiff's shares of common capital stock if they had not attempted to impose additional taxes upon plaintiff by reason of the fact that preferred shares of stock of the plaintiff were owned and held by the Reconstruction Finance Corporation.

XXVIII.

That each of the said county treasurers aforesaid refused and continues to refuse to accept payment of the amount tendered upon the ground that said amount tendered was not the full amount of taxes assessed to and payable by plaintiff for the purposes for which it was tendered. That each of said county [203] treasurers, on refusing said tender, declared that it was his duty to collect from plaintiff the amount of taxes assessed against plaintiff's shares of stock that appeared on his books, and that he would proceed to collect the same in accordance with the laws of the State of Arizona.

That plaintiff has been and is willing and able, and has stood ready and will continue to stand ready to pay to each of the above mentioned county treasurers the amounts tendered as aforesaid, and that if it shall be held in this suit that the sums which plaintiff has tendered and offered to pay to the said county treasurers, or any of them, for the purposes for which said tenders were made, are less than the amounts found justly and equitably due and owing by the plaintiff to the said county treasurers, or any of them, for 1935 taxes, plaintiff stands ready, able and willing to pay, and will pay to the said county treasurers, and each of them, such other and further sum or sums as may be found to be just and equitable.

XXIX.

That it was and is provided by Section 3101, Revised Code of Arizona for 1928, as amended by Chapter 106, Session Laws of Arizona for 1931, that all taxes levied upon real or personal property shall be a lien upon the property assessed, which lien shall attach on the first Monday in January in each year and shall not be satisfied or removed until such taxes, penalties, charges and interest are paid or the property is finally vested in a purchaser under a sale for taxes, and that said lien shall be prior and superior to all other liens and encumbrances upon said property, except liens and encumbrances held by the state of Arizona. That it is further provided by said section, amended as aforesaid, that personal property shall be liable for taxes levied on real [204] property and real property shall be liable for taxes levied on personal property, and that a judgment against real property for non-payment of taxes thereon or assessed to the personal property of the same person shall not be prevented by showing that the owner thereof was possessed of personal property out of which the taxes could have been made.

That it was and is provided by Section 3070, Revised Code of Arizona, 1928, that the taxes due upon shares of banking corporations or associations shall be paid by such corporation or association and shall be a lien against and assessed to such shares of stock and no such corporation or association shall pay any dividends to any shareholder who is

in default in the payment of taxes due on his shares, nor shall it permit the transfer on its books of any shares the owner of which is in default in the payment of his taxes on the same.

That it was and is provided by Section 3112 of the Revised Code of Arizona, 1928, that the county treasurer may at any time after receiving the tax roll, collect by distraint and sale, if not otherwise collected, the taxes due on personal property; that the sale must be at public auction after one week's notice of the time and place thereof, and must be of a sufficient amount of the property issued to pay the taxes, fees and costs, and that on payment of the purchase price and the delivery of the property with a bill of sale thereof, title thereto vest in the purchaser.

That it was and is provided by Section 15 of Title 103 of Arizona Session Laws of 1931, that taxes upon real estate if unpaid, shall become delinquent, first half, on the first Monday in November, and second half, on the first Monday in May, of each year, and that it was and is provided by Section 17 of said Chapter 103, that all taxes shall bear interest [205] from the time of delinquency at the rate of ten per cent per annum until paid, and a fraction of a month shall be counted as a whole month, and that it was and is further provided by Section 18 of said Chapter 103, that all real property upon which the taxes, including personal property taxes secured thereby are unpaid and delinquent, shall be subject to sale as in said chapter provided.

XXX.

That by virtue of the foregoing provisions of the statutes of the state of Arizona, the taxes levied and assessed upon plaintiff's shares of stock for the year 1935 in the manner aforesaid, whether legal or illegal, became payable on or before the fourth day of November, 1935.

Plaintiff in the year 1935, and at all times since, has owned and held real estate in all of the counties which are parties defendant to this suit, except Yavapai County.

That many of the owners and holders of plaintiff's shares of stock owned and held during the year 1935, and now own and hold real estate in one or more of said counties, and that the aforesaid illegal taxes are an apparent lien or cloud upon the real estate owned by the plaintiff in the respective counties and upon the real estate of the shareholders of the plaintiff in the respective counties as well as upon said shares of stock and that said shares of stock on said 4th day of November, 1935, became subject to seizure and sale for said taxes in the manner provided by the Statutes of Arizona above set forth.

That it was impossible for plaintiff to determine from the assessments made in Pima and Graham counties whether the taxes imposed in said counties were imposed solely on plaintiff's shares of common stock or upon both common and preferred shares and if plaintiff assumed that said taxes were imposed [206] upon both classes of stock, it was

impossible to apportion the same between the common and preferred shares. If plaintiff paid said taxes as demanded by the treasurers of said two counties it would not know to which class of its shareholders to charge said payment, or if it charged the same to both classes, it would not know what amount to charge to each, and if it attempted to secure reimbursement by withholding payment of dividends or refusing transfers of shares, it would subject itself to a separate suit for damages by each of its shareholders.

That plaintiff filed its original Bill of Complaint in this court before the fourth day of November, 1935, and prayed for the issuance of a temporary injunction restraining the defendants from proceeding to collect the taxes complained of; that after said complaint was filed, a stipulation was entered into by and between the plaintiff and the several defendants by which it was stipulated and agreed that the several defendant county treasurers would accept the amount of taxes theretofore tendered by the plaintiff to each of them without prejudice to their right to collect the remainder at any future time and that the plaintiff might withdraw its application for temporary injunction and that the said defendants would refrain from proceeding to enforce collection of the taxes alleged by plaintiff to be illegal during the pendency of this suit, but that said defendants or any of them should have the right at any future time to proceed to collect said taxes in the manner they thought proper and that

if they did so proceed, or threaten to proceed, plaintiff should have the right to renew its application for temporary injunction. That said stipulation expressly provided that the rights of any party to prosecute or defend this suit should not be prejudiced or affected in any way by said stipulation, or [207] anything done in pursuance thereof except in so far as said stipulation expressly provided therefor. That said stipulation was approved by an Order regularly made and entered by the court.

That on or about the 10th day of April, 1939, the County Treasurer of Pima County gave notice to the plaintiff that he would proceed to collect all of the taxes assessed in his county against plaintiff's shares of stock for the year 1935, including those alleged to be illegal by the plaintiff, as well as those admitted to be legal.

That by reason of the aforesaid action of the County Treasurer of Pima county, all of the defendants renewed their threat to enforce collection of the taxes sought to be enjoined, in this case. That those county officers made parties defendant hereto who had come into office since filing the original Bill of Complaint continued the threat of their predecessors to enforce collection of said taxes, and that by reason of the aforesaid threats, plaintiff thereupon renewed its application for temporary injunction.

XXXI.

That it was and is provided by Section 3065, Revised Code of Arizona for 1928, that a taxpayer dissatisfied with the amount of his assessment as re-

viewed by the State Board of Equalization may appeal from said assessment to the Superior Court of the county where the taxes are payable; that the remedy of such appeal was and is not available to the plaintiff to relieve it from the burden of the illegal taxes herein complained of, for the following reasons:

1. That said appeal is by said Section 3065 limited to a determination of the full cash value of the property assessed, and does not give the party appealing the right to question the legality of the tax imposed or any part thereof. [208]

2. That the judgment of the court on such appeal is by said Section 3065, limited to finding the full cash value of the property assessed and said judgment cannot provide for the elimination from the assessment of property illegally or wrongfully assessed.

3. That such appeal would have to be taken separately from the valuation made by each of the four counties to the Superior court of that county. The question of apportionment among said four counties would have to be determined separately in each of said counties without an opportunity for any county, except the one in whose Superior Court the particular suit was pending, to be heard on said question, with the result that there would probably be four different decisions and four different appeals to the Supreme Court, all of which would have to be determined without opportunity for the

several counties to directly contest their respective contentions.

4. That no such appeal can be taken unless the appellant first pays to the said county treasurer the amount of taxes levied against this property; and unless so paid the appeal must be dismissed by the court, and there is no provision for the county treasurer withholding the disbursements of the money paid by appellant until the determination of said appeal and the judgment on the appeal, if in favor of the appellant, can only be a judgment against the county for the amount of the excess taxes paid.

5. That said appeal lies only to the Superior Court of the county in which the tax is assessed and is not available in a Federal Court; that such appeal is a judicial and not an administrative remedy and plaintiff, under the constitution and laws of the United States, is not obliged to resort thereto but may bring its action in a Federal Court of Equity. [209]

XXXII.

That it was and is provided by Section 55 of Chapter 103 of Arizona Session Laws for 1931, that no person upon whom a tax has been imposed under any law relating to taxation shall be permitted to test the validity thereof either as plaintiff or defendant, unless such taxes shall first have been paid to the proper county treasurer together with all penalties thereon and that no injunction

shall ever issue in any county or proceeding in any court against the state or against any county, municipality or officer thereof, to prevent or enjoin the collection of any tax levied.

That it was and is provided by the aforesaid Section 55, that after payment of taxes an action may be maintained to recover any tax illegally collected, and if the tax due shall be determined to be less than the amount paid, the excess shall be refunded in the manner "hereinbefore provided", but that said Chapter 103, Arizona Session Laws of 1931, wholly fails to provide in what manner said refund may be made.

That it was and is provided by Section 876 of the revised Code of Arizona for 1928, that the treasurers of the several counties shall transmit to the state treasurer all money in the county treasury belonging to the state, or collected for it within ten days after receipt of a letter from the State Treasurer to that effect.

That it was and is provided by Section 3107, Revised Code of Arizona for 1928, that the county treasurer shall pay to the treasurer of each City or Town in his county, on the first day of each month in each year, all money in his hands collected for the previous month on taxes for said city or town.

That it was and is provided by Section 1029, Revised Code of Arizona for 1928, that the county treasurer shall [210] receive and hold as a special fund all school moneys, and keep a separate account thereof, and when it is apportioned among the

school districts, shall keep a separate account for each district, notify the County School Superintendent on the first of each calendar month of the amount of the county school fund and special district funds on hand in the treasury to the credit of such fund, and pay over on the warrants of the county school superintendent duly endorsed by the person entitled to receive the same, any or all such money.

That there is no provision in the laws of the state of Arizona requiring or permitting county treasurers to withhold from apportionment or distribution to the state or city or towns, or school districts, or other legal subdivisions therein, any tax money paid to them under protest or as a condition precedent to the appeal provided by Section 3065, Revised Code of Arizona for 1928, from the valuation fixed by the State Board of Equalization.

XXXIII.

That at the time of the filing of the original complaint in this cause there was no controlling decision by the Courts of Arizona determining the nature of the judgment that should be rendered in a case to recover taxes paid under protest, under the provisions of Section 55 of Chapter 103, Arizona Session Laws of 1931. Plaintiff alleged in the original complaint that it might be held by the courts of Arizona that separate actions would be required to be brought against the county and the state and school districts, and the municipalities to which the taxes

sought to be recovered had been distributed, and that if it were so held, it would be impracticable for plaintiff to pay the taxes and sue to recover the amount paid from the various counties, school districts and municipalities, on account of the multiplicity of suits that would be required [211] to be brought in such event. That since the filing of the original complaint in the cause, on or about the 10th day of October, 1935, the Supreme Court of Arizona construed Section 55 of Chapter 103 of the Session Laws of 1931 so as to give a taxpayer who had paid taxes under protest and sued to recover the same, an ordinary judgment against the county into whose treasury the money was paid by the taxpayer. Said court construed said Section 55 as not creating a trust fund of the tax moneys paid under protest, and as not requiring the county treasurer to withhold distribution of said tax moneys so paid under protest, and as not requiring said county treasurer to refund the particular moneys paid to him, and further interpreted said Section 55 with other sections construed together therewith as giving to the taxpayer who had paid his taxes under protest merely the right to an ordinary judgment against the county on an equality with other general obligations of the county. As thus construed, said Section 55 gives to the taxpayer paying taxes under protest, if the taxes are shown to have been illegal, a judgment against the county, which it is the duty of the Board of Supervisors of the county to pay out of funds in the county treasury

not otherwise appropriated, or, if there are no such funds, it becomes the duty of the Board of Supervisors to budget the judgment as a county expense and levy a tax to pay it.

That if plaintiff had paid the taxes sought to be enjoined in this suit when the original complaint was filed and had brought immediate suits to recover the same and had promptly obtained judgment against the respective counties parties hereto; it would in all probability have realized on said judgments against the counties of Pima, Graham and Mohave within the period of one year from the date that the judgment became final, but that the financial affairs of the county of [212] Maricopa at the time when the original complaint in this suit was filed and for sometime thereafter were such that any judgment obtained by plaintiff against Maricopa County would have remained unpaid for four years from the date of said judgment; that the financial condition of Maricopa County began to improve immediately after the year 1935, and from and after approximately three years from the date of the filing of the original complaint herein, any judgment obtained against Maricopa County would have been paid within a year after it became final.

XXIV.

That the assessments made or attempted to be made on plaintiff's shares of stock in Pima and Graham Counties are based upon a valuation of the tangible properties owned and held by plaintiff in

said counties. That the taxing officials of said counties took the position that said method of valuation was justified by the concluding sentence of Section 3071 Revised Code of Arizona for 1928. At the time of the trial the taxing official of said Pima and Graham Counties took the position that any excess valuation imposed upon plaintiff's shares of stock in all of the counties by reason of the different methods of valuation prescribed by the first portion of said Section 3071, Revised Code of Arizona for 1928, which was followed by the counties other than Pima and Graham and that prescribed by the concluding sentence of said Section 3071, which was purported to be followed by said Pima and Graham Counties must be borne by plaintiff and its stockholders as additional valuation. This position was first taken by Pima and Graham Counties upon their filing of the joint and several answers of the defendants to the second amended and supplemental bill of complaint which was filed in July 1940, and that prior to said date plaintiff believed and was justified [213] in believing that said Pima and Graham Counties were attempting to cast the excess valuation produced by the different methods of assessment in the different counties upon the other counties in any proceeding involving said taxes and such issue, if it had been raised, could have determined only in an equitable proceeding to which the several counties were parties.

That subsequent to the filing of the original complaint in this cause, at the time fixed by law for

assessing taxes for the year 1937, the taxing officials of the several counties, parties hereto, and of other counties in the State of Arizona in which plaintiff has branches, assessed taxes for the year 1937 upon plaintiff's shares of stock; that all of such assessments were reviewed at the proper time by the State Board of Equalization; that said Board eliminated all values represented by plaintiff's preferred stock from such assessments for said 1937 taxes, except that in the case of Pima County the assessment was again made for an amount equal to the full value of the tangible, real and personal property owned by the plaintiff and situated in that county, said Pima county thus again assessing values represented by plaintiff's preferred stock owned and held by Reconstruction Finance Corporation, and said State Board of Equalization thus again declined to eliminate said value from said assessment and said Pima county imposed a tax of approximately $11,400.00 on values represented by plaintiff's preferred stock owned and held by Reconstruction Finance Corporation. Plaintiff did not appeal from the action of said Board of Equalization under Section 3065, Revised Code of Arizona for 1928, but paid the full tax assessed, under protest, and sued to reciver said sum of $11,400.00 from Pima county, or, in the alternative, if Pima county's method of assessment should be found correct by the court, to recover said sum pro rata from the other counties [214] to which it was paid.

The trial court held that the plaintiff's exclusive remedy provided by the State Law was by appeal to the Superior Court of the county, under Section 3065, Revised Code of 1928, and that plaintiff had no remedy to pay the tax under protest and recover the same under Section 55, Chapter 103, Session Laws of 1931. On or about June 30, 1941, and after this court had rendered its decision in favor of the plaintiff herein, the Supreme Court of Arizona reversed the said decision of the trial court holding that the remedy under Section 55, Chapter 103, Session Laws of 1931, was available to plaintiff. Prior to said decision of June 30, 1941, there was no decision by the Supreme Court of Arizona authoritatively passing upon the question. Said Supreme Court had once said by way of dictum that the remedy provided by Section 55, Chapter 103, Session Laws of 1931, was available only when the tax was assessed under an unconstitutional law, and again it had said by way of dictum that the remedy provided by Section 55, Chapter 103 Session Laws of 1931, was available whenever no other remedy was provided by law. There being conflicting declaraitons by it, said Supreme Court did not consider itself bound by their expression and deemed the question wholly open for future decision, until it determined the question by its decision of June 30, 1941.

XXXV.

That at no time prior to the decision of this court in plaintiff's favor was there available to plaintiff

a plain, speedy and adequate remedy by payment of the illegal taxes, and suing to recover the same, and plaintiff is entitled to maintain this suit in equity for the purpose of preventing a multiciplicity of suits, and to obtain an adjudication of the proper apportionment of taxes between the several counties parties hereto.

XXXVI.

That by reason of the provisions in the statute of the state of Arizona, prohibiting the issuance of an injunction to prevent the collection of illegal taxes, plaintiff at all times prior to the decision of this court in plaintiff's favor, was without a plain, speedy and adequate remedy in the courts of the State of Arizona, and had no remedy except in the United States District Court, for the District of Arizona. [215]

XXXVII.

That the plaintiff has exhausted all administrative remedies available to it under the statutes and laws of the state of Arizona.

XXXVIII.

That plaintiff, unless granted the relief prayed for in its complaint, will suffer great and irreparable damage and injury, and will be subjected to a multiplicity of suits, and has no plain or adequate remedy at law.

XXXIX.

That at the time of the filing of the original complaint in this cause, plaintiff believed in good faith that the constitution and laws of the United States secured to plaintiff and its shareholders immunity from taxation by or under the authority of the state on its shares of preferred stock hereinbefore described, and on the assets represented by said preferred stock, said assets being acquired by and from the money paid to it by the Reconstruction Finance Corporation of the United States of America, as the purchase price of said preferred stock, and that in said original complaint plaintiff, on behalf of itself and as the agent and trustee of its shareholders, expressly claimed such immunity.

That plaintiff in said original complaint further claimed immunity from such taxation under the exemption granted to said property by Section 2 of Article IX of the Arizona Constitution, and likewise claimed that the taxes sought to be enjoined by it in said original complaint were illegal and void, because of discrimination against it made by the assessing officers in violation of the Constitution of Arizona, and the Act of Congress permitting and limiting the taxation of shares of stock of national banks.

That after the filing of the original Bill of Complaint [216] in this cause, to-wit, on or about the 3rd day of February, 1936, the Supreme Court of the United States determined and decided that the immunity from taxation under the Constitution and

laws of the United States of the shares of preferred stock of National banks held by the Reconstruction Finance Corporation, had been waived by the Congress of the United States giving its consent to the taxation of shares of stock of national banks.

That while said original complaint remained pending on plaintiff's claim of the exemption of the taxes sought to be enjoined under Section 2 of Article IX of the State Constitution, and plaintiff's claim of discriminatory assessment violating the Constitution of the State of Arizona, and plaintiff's claim of the violation of the Acts of Congress permitting and limiting the assessment of shares of stock of national banks; on or about the 20th day of March, 1936, the Congress of the United States passed an act which was signed by the President on the same day, expressly declaring that preferred stock of national banks held by the Reconstruction Finance Corporation of the United States, should be exempt from all taxes, whether theretofore or thereafter assessed or levied. That the major portion of the taxes, the collection of which the plaintiff seeks to enjoin in this case, falls clearly within the terms of said last mentioned Act of Congress as taxes theretofore assessed and levied, and which have not been paid. That the Reconstruction Finance Corporation, the holder of the shares of preferred stock of the plaintiff against which the major portion of the taxes herein sought to be enjoined has been levied, immediately gave notice to

the plaintiff to refuse payment of all taxes heretofore or hereafter assessed or levied against the preferred stock of the plaintiff owned and held by the Reconstruction Finance Corporation. That the whole [217] of the $1,240,000.00 par value of the shares of stock attempted to be assessed for taxes as hereinbefore alleged, is and at all times hereinafter mentioned has been owned by said Reconstruction Finance Corporation. That under the provisions of Sections 3069 and 3070, of the Revised Code of Arizona, and also under the decisions of the Supreme Court of the United States, made February 3, 1936, the major portion of the illegal taxes, the collection of which is sought to be enjoined in this case, is levied and assessed upon the shares of preferred stock of the plaintiff owned and held by the Reconstruction Finance Corporation, and is payable only by the plaintiff as the statutory agent for such preferred shareholder, and if plaintiff pays such taxes, the same cannot be deducted from its general assets, nor can the same be deducted from the dividends to its common shareholders, but under the said Sections 3069 and 3070 of the Revised Code of 1928, the same are required to be deducted from the dividends on the preferred stock of the Reconstruction Finance Corporation.

That under the provisions of the Act of Congress, which became a law on March 20, 1936, the Reconstruction Finance Corporation is precluded from permitting the plaintiff to deduct said taxes from the dividends payable on the preferred stock held by it.

That if plaintiff is required to pay said taxes to the respective counties which are parties defendant hereto as the agent of the Reconstruction Finance Corporation, as its preferred shareholder, it will be unable to reimburse itself for such payment from the Reconstruction Finance Corporation, and will be compelled to pay said taxes on its preferred shares of stock out of its own funds, to which the holders of its common shares are entitled. That plaintiff herein expressly claims the right, privilege and immunity under the constitution [218] and laws of the United States, of not being subjected to the payment of such taxes of its preferred shareholder, which it will be unable to collect from such shareholder.

CONCLUSIONS OF LAW

I.

That the Act of Congress of March 20th, 1936, exempting preferred stock of banks from state and local taxation while such stock is owned and held by Reconstruction Finance Corporation is constitutional. Those provisions of said Act which operate retroactively are of equal validity with those that operate prospectively.

II.

That the valuation imposed by Maricopa county upon plaintiff's shares of stock for the tax year 1935 was to the extent of $507,501.00 imposed upon plaintiff's shares of preferred stock owned and held

by Reconstruction Finance Corporation, and that the taxes levied by Maricopa County as payable by plaintiff for the tax year 1935 were to the extent of $31,872.77, levied upon plaintiff's shares of preferred stock which have at all times been owned and held by Reconstruction Finance Corporation.

III.

That the valuation of $327,590.00 which Pima County claims it placed upon plaintiff's shares of common stock for the tax year 1935 was not made in accordance with the concluding sentence of Section 3071, Revised Code of Arizona for 1928, nor any other statute of the State of Arizona, and was void and of no effect to the extent of $188,501.20, which was imposed upon property values represented by plaintiff's preferred stock owned and held by Reconstruction Finance Corporation, and of the taxes levied by Pima County for the tax year 1935, as payable by plaintiff, $11,725.68 was void and uncollectable as levied [219] upon values represented by plaintiff's preferred stock owned and held by Reconstruction Finance Corporation.

IV.

That the valuation of $29,385.00 which Graham County claims it placed upon plaintiff's shares of common stock for the tax year 1935 was not made in accordance with the concluding sentence of Section 3071 Revised Code of Arizona, 1928, nor any other statute of the State of Arizona, and was void and of no effect to the extent of $17,117.58, which

was imposed upon property values represented by plaintiff's preferred stock owned and held by Reconstruction Finance Corporation, and of the taxes levied by Graham county for the tax year 1935 as payable by plaintiff, $1,086.30 was void and uncollectable as levied upon values represented by plaintiff's preferred stock owned and held by Reconstruction Finance Corporation.

V.

That the valuation placed by Mohave County upon plaintiff's shares of stock for the tax year 1935 was invalid to the extent of $2,394.16, and, of the taxes levied for Mohave County for the tax year 1935 as payable by plaintiff, $100.30 was invalid, for the following reasons: (a) Said taxes were levied in violation of Section 548, Vol. 12 United States Code Annotated, prohibiting the taxation of shares of stock of national banks at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens coming into competition with the business of national banks, and (b) Said taxes were levied in violation of Section 1 of Article IX of the Arizona Constitution providing for uniformity in taxation of property of the same class.

VI.

That if defendants' contention that the valuations made by Maricopa, Pima and Graham counties were not in fact valua- [220] tions of plaintiff's preferred stock or property values represented by such preferred stock be accepted, it will necessarily

follow that such valuations are illegal and void for the following reasons: (a) Each of them resulted in a violation of Section 548, Vol. 12, United States Code Annotated, prohibiting the taxation of shares of stock of national banks at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens coming in competition with the business of national banks, and (b) Each of them resulted in a violation of Section 1 of Article IX of the Arizona Constitution requiring uniformity in the taxation of property of the same class.

VII.

That the four counties parties defendant to this suit were properly joined to prevent a multiplicity of suits. While the assessments in some of the counties present questions not presented by the assessments in other counties the important questions of law and fact are presented by each of said assessments and should properly be determined in a single suit. The questions to be determined do not involve separate taxes in the four different counties, but one tax imposed upon plaintiff's shares of stock under Section 3070, and apportioned among the several counties under Section 3071, Revised Code of Arizona, 1928.

VIII.

That the appeal proceeding provided for by Section 3065 Revised Code of Arizona for 1928, is a judicial, not an administrative remedy, and is not available in the federal courts and that plaintiff

VII.

under the federal law as it existed when this suit was begun, was not required to resort to such appeal proceeding.

IX.

That the tax payer is plaintiff in an appeal proceeding [221] under Section 3065, Revised Code of Arizona for 1928, and is not entitled to remove such appeal proceeding to the federal courts.

X.

That at all times prior to the decision of this court in plaintiff's favor, plaintiff had no plain and adequate remedy by paying the taxes sought to be enjoined and suing to recover them under Section 55, Chapter 103, Session Laws of 1931, for the reason that under the decisions of the Supreme Court of Arizona, it was undetermined and doubtful if such remedy was available and a decision of the Superior Court of Pinal County, Arizona, received in evidence in this case, held it was not available.

XI.

That plaintiff was legally entitled to set up the Act of Congress of March 20, 1936, by amended and supplemental complaint, in support of its original complaint though said Act was not passed until after the original complaint was filed.

XII.

That inasmuch as it appears from the record in this case all taxes admitted to be owing to the re-

spective defendants have been paid to the respective county treasurers under stipulations approved by this court, and it is admitted by the defendants that the amounts so paid under stipulation are the proper amounts in the event plaintiff's legal contentions are sustained and the court has found the issues in plaintiff's favor, plaintiff is entitled to an injunction enjoining the several county treasurers, parties defendant hereto, from collecting any further taxes from plaintiff, or its shareholders, for the year 1935, and to its costs.

DAVE W. LING
Judge

Dated: October 8, 1941. [222]

[Endorsed]: Received copy of within this 23rd day of June, 1941. Richard F. Harless, Leslie C. Hardy, Charles B. McAlister, Attorneys for Maricopa County et al. Joe Conway, Attorney General State of Arizona.

[Endorsed]: Pltf's Proposed Findings, etc. Filed Jun. 23, 1941. Edwards W. Scruggs, Clerk, United States Circuit Court for the District of Arizona. By Wm. H. Loveless, Chief Deputy Clerk.

[Endorsed]: Findings of Fact and Conclusions of Law. Filed Oct. 8, 1941. Edward W. Scruggs, Clerk, United States District Court for the District of Arizona. By Wm. H. Loveless, Deputy Clerk.

[223]

In the District Court of the United States
for the District of Arizona

No. E-333 Phx

THE VALLEY NATIONAL BANK OF PHOENIX,

Plaintiff,

vs.

MARICOPA COUNTY, et al,

Defendants.

JUDGMENT ENJOINING COLLECTION OF TAXES

This cause came on regularly for trial on the 29th day of November, 1940, before the Honorable Dave W. Ling, Judge of the District Court of the United States for the District of Arizona, a jury having been waived by all parties to said cause. Evidence having been received and the trial concluded on said date, the case was submitted to the court for its consideration by counsel for the respective parties.

The court, after due consideration having found the issues in favor of plaintiff and Findings of Fact and Conclusions of Law having been signed by the court and filed herein:

It is ordered, adjudged and decreed that the following taxes for the tax year of 1935, were legally levied against the holders of the shares of common stock of the plaintiff and were payable by the plain-

tiff as and for state, county, school district and other local taxes (except City of Phoenix taxes); and were collectible by the respective County Treasurers of said counties from the plaintiff as follows:

Maricopa County	$17,938.09
Pima County	8,637.30
Graham County	808.58
Mohave County	298.78

That all other and further taxes levied or assessed or attempted to be levied and assessed as state, county, school dist- [224]rict and other local taxes (except City of Phoenix taxes) in the above named counties for the year 1935, upon plaintiff's shares of stock or as payable by plaintiff were and are illegal and void.

That in pursuance of a stipulation entered into by the plaintiff with the respective County Treasurers, who are parties to this suit, approved by the order of this court in this cause, all of the above mentioned taxes found to be legal and valid have been paid by the plaintiff to the respective County Treasurers and that by such payment all state, county, school district and other local taxes collectible from plaintiff by the County Treasurers of the above named counties (except City of Phoenix taxes) have been fully paid; that the defendants hereto have no legal right, power or authority to levy or cause to be levied any further taxes against the plaintiff or its shareholders payable in the aforesaid counties as and for taxes for the year 1935.

It is further ordered, adjudged and decreed that the respective County Treasurers of the four counties herein named, their deputies, agents and servants be and they hereby are permanently restrained and enjoind from collecting any further moneys from the plaintiff or its shareholders as and for state, county, school district or other local taxes for the tax year 1935, (except City of Phoenix taxes) and that plaintiff have and recover from the defendants its costs herein incurred to be taxed by the Clerk of this court.

Done in open court this 8th day of October, 1941.

[225]

[Endorsed]: Received copy of within this 23rd day of June, 1941. Richard F. Harless, Leslie C. Hardy, Charles B. McAlister, Attorneys for Maricopa County. Joe Conway, Attorney General, State of Arizona.

[Endorsed]: Pltf's Proposed Judgment. Filed Jun. 23, 1941. Edward W. Scruggs, Clerk, United States District Court for the District of Arizona. By Wm. H. Loveless, Chief Deputy Clerk.

[Endorsed]: Judgment filed Oct. 8, 1941. Edward W. Scruggs, Clerk, United States District Court for the District of Arizona. By Wm. H. Loveless, Chief Deputy Clerk. [226]

[Title of District Court and Cause—E-350.]

MINUTE ENTRY OF WEDNESDAY, OCTOBER 8, 1941

It is ordered that the objections of Maricopa County, Arizona, et al, and of Pima County Arizona, et al, to Plaintiff's Proposed Findings of Fact and Conclusions of Law be, and they are hereby overruled.

It is further ordered that Plaintiff's Proposed Findings of Fact and Conclusions of Law and suggested amendments thereto be, and they are hereby adopted.

It is further ordered that the form of judgment for Plaintiff heretofore proposed, as now amended, be filed, entered and spread on the minutes as the judgment in this case, as follows:

(Title of Cause E-350)

JUDGMENT ENJOINING COLLECTION OF TAXES

This cause came on regularly for trial on the 29th day of November, 1940, before the Honorable Dave W. Ling, Judge of the District Court of the United States for the District of Arizona, a jury having been waived by all parties to said cause. Evidence having been received and the trial concluded on said date, the case was submitted to the court for its consideration by counsel for the respective parties.

The court, after due consideration having found

the issues in favor of plaintiff, and Findings of Fact and Conclusions of Law having been signed by the Court and filed herein:

It is ordered, adjudged and decreed that the following taxes for the tax year of 1936, were legally levied against the holders of the shares of common stock of the plaintiff and were payable by the plaintiff as and for state, county, school district and other local taxes (except City of Phoenix taxes) and were collectible by the respective County Treasurers of said counties from the plaintiff as follows: [227]

Maricopa County	$14,983.29
Pima County	4,900.84
Graham County	673.71
Yavapai County	677.32
Gila County	4,296.68

That all other and further taxes levied or assessed, or attempted to be levied and assessed as state, county, school district and other local taxes (excepting City of Phoenix taxes) in the above named counties for the year 1936, upon plaintiff's shares of stock or as payable by plaintiff were and are illegal and void.

That on or about the 7th day of December, 1936, the plaintiff entered into a stipulation with the respective County Treasurers who are parties to this suit, approved by the order of this court in this cause, by which it was provided that all of the above mentioned taxes found to be legal and valid would be paid by the plaintiff to the respective County

Treasurers without prejudice to the further prosecution or defense of this suit, as to the balance of the taxes sought to be enjoined by the plaintiff. That in pursuance of said stipulation the plaintiff has paid to the treasurers of Maricopa, Pima, Graham, Yavapai and Gila counties, respectively, the amount of the taxes hereinabove found to be legally assessed against plaintiff's shareholders and payable by the plaintiff in said counties.

That the defendants hereto have no legal right, power or authority to collect any further taxes for the year 1936, from the plaintiff.

That the defendants hereto have no legal right, power or authority to levy or cause to be levied any further taxes against the plaintiff or its shareholders, payable in the aforesaid counties as and for taxes for the year 1936.

It is further ordered, adjudged and decreed that the respective county treasurers of the five counties herein named, their deputies, agents and servants, be and they hereby are permanently restrained and enjoined from collecting any further moneys from the plaintiff or its shareholders, as and for said county, school district or other local taxes for the year 1936 (except City of Phoenix taxes), and that plaintiff have and recover from the defendants its costs herein incurred, to be taxed by the clerk of this court.

Done in open court this 8th day of October, 1941.

[228]

[Title of District Court and Cause—E-350.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This cause regularly having come on for trial upon plaintiff's amended and supplemental bill of complaint and the joint and several answers of defendants to amended and supplemental bill of complaint upon the 29th day of November, 1940, and the court having heard the evidence of the parties without a jury and the cause having been submitted for the consideration of the court by counsel for the respective parties, upon due consideration the court finds the following facts:

I.

That plaintiff is, and was at all times since the 11th day of February, 1935, a corporation, duly incorporated as a National Banking Association under the laws of the United States of America, and authorized to do a banking business in the State of Arizona, having its principal banking house at Phoenix, Maricopa County, Arizona, and branches in other cities and towns in the county of Maricopa, and in cities and towns in the counties of Pima, Graham, Mohave, Gila, Greenlee, Pinal and Yavapai.

That plaintiff brings this suit in its own behalf and in behalf and as the agent of the holders of its common stock.

That the defendants, Maricopa County, Pima County, [229] Graham County, Yavapai County and

Gila County, each are and at all times herein mentioned, were duly organized and existing counties of the State of Arizona, and political subdivisions of said state;

That Harry M. Moore is a citizen and resident of Maricopa County, Arizona, and at the time of the filing of the original complaint in this cause, was the duly elected, qualified and acting County Treasurer and Ex Officio Tax Collector of said county; that after the filing of said original complaint he was succeeded in said office by Ed. Oglesby, a citizen and resident of said Maricopa County, and that said Ed. Oglesby was duly substituted in place of said Harry M. Moore as the duly elected, qualified and acting County Treasurer and Ex Officio Tax Collector of Maricopa County, and as such officer was a party defendant at the time of the trial and that thereafter on or about the 4th day of January, 1941, W. H. Linville succeeded the said Ed. Oglesby as such County Treasurer and Ex Officio Tax Collector, and was regularly substituted as a party defendant hereto as such County Treasurer and Ex Officio Tax Collector;

That the defendant, J. D. Brush, is a citizen and resident of Maricopa County, Arizona, and is the duly elected, qualified and acting County Assessor of said County, and is sued herein as such officer;

That the defendants John A. Foote and Geo. Frye, are citizens and residents of Maricopa County, Arizona, and are now and at all times herein

mentioned were duly elected, qualified and acting members of the Board of Supervisors of said Maricopa County and the County Board of Equalization of said county;

That at the time of the filing of the original complaint herein C. W. Peterson, a citizen and resident of Maricopa [230] County, Arizona, was the third member of said County Board of Supervisors and said County Board of Equalization, and that said C. W. Peterson has been succeeded in said offices by Charles H. Fields, a citizen and resident of Maricopa County, who has been regularly substituted for said C. W. Peterson as a party defendant to this suit as such officer;

That Daniel E. Garvey is a citizen and resident of Pima County, Arizona, and at the time of the filing of the original complaint in this cause, was the duly elected, qualified and acting county treasurer and Ex Officio Tax Collector of said county; that since the filing of said original complaint, Wallace Bransford, a citizen and resident of Pima County, Arizona, has succeeded said Daniel E. Garvey as County Treasurer and Ex Officio Tax Collector of said county, and is sued herein as such officer, having been legally substituted as a party defendant in said cause in place of the said Daniel E. Garvey;

That the defendant Charles M. Taylor, is a citizen and resident of Pima County, Arizona, and is the duly elected, qualified and acting County Assessor of said county, and is sued herein as such officer.

That Warren A. Grossetta, R. H. Martin and J. B. Mead are citizens and residents of Pima County, Arizona, and at the time of the filing of the original complaint in this cause, were the duly elected, qualified and acting members of the Board of Supervisors of said Pima County and the Board of Equalization of said county;

That since the filing of the original complaint in this cause, Thomas Collins, a citizen and resident of Pima County, Arizona, has been duly elected a member of the Board of Supervisors of Pima County, Arizona, to succeed Warren A. Grossetta, and that said Thomas Collins, R. H. Martin and J. B. Mead do now constitute the Board of Supervisors of [231] Pima County, Arizona, and are sued herein as such officers, the said Thomas Collins having been substituted as a party defendant in place of Warren A. Grossetta;

That Charles M. Geitz was a citizen and resident of Graham County, Arizona, and was the duly elected, qualified and acting County Treasurer and Ex Officio Tax Collector of said county at the time of the filing of the original complaint in this cause; that since the filing of the original complaint in this cause Earl M. Lines has succeeded the said Charles M. Geitz as the duly elected, qualified and acting County Treasurer and Ex Officio Tax Collector of said county and is sued herein as such officer, having been substituted as a party defendant in place of said Charles M. Geitz;

That the defendant, Alvin Goodman, is a citizen and resident of Graham County, Arizona, and is the duly elected, qualified and acting County Assessor of said county, and is sued herein as such officer;

That J. W. Greenhalgh, Glen Hoopes and Virgil McEuen, are citizens and residents of Graham County, Arizona, and at the time of the filing of the original complaint in this cause, were the duly elected, qualified and acting members of and constituted the Board of Supervisors of said Graham County, and the County Board of Equalization of said county;

That after the filing of the original complaint in this cause, Ernest D. Householder and M. E. Dubois, citizens and residents of Graham County, Arizona, succeeded J. W. Greenhalgh and Virgil McEuen as members of the Board of Supervisors of said Graham County, and the said Glen Hoopes, Ernest D. Householder and M. E. Dubois thereafter constituted the Board of Supervisors of said Graham County and the Board of Equalization of said county, and were substituted as parties defendant in the place of J. W. Greenhalgh and Virgil McEuen; and that [232] thereafter M. M. Larson succeeded Ernest D. Householder as a member of said Board of Supervisors and said County Board of Equalization and thereupon said M. M. Larson was regularly substituted for said Ernest D. Householder as a party defendant to this suit as such officer;

That David H. Biles was a citizen and resident of Yavapai County, Arizona, and the duly elected,

qualified and acting County Treasurer and Ex Officio Tax Collector of said County at the time of the filing of the original complaint in said cause; that said David H. Biles was succeeded as such County Treasurer and Ex Officio Tax Collector by Pearl Bethea, a citizen and resident of Yavapai County, Arizona, and that the said Pearl Bethea as such County Treasurer and Ex Officio Tax Collector was substituted as a party defendant to this case and thereafter Harry Marshall succeeded Pearl Bethea as County Treasurer and Ex Officio Tax Collector of said Yavapai County, and was regularly substituted for Pearl Bethea as a party defendant to this case as such officer;

That C. H. Riebeling was a citizen and resident of Yavapai County, Arizona, at the time of the filing of the original complaint in this cause and was the duly elected, qualified and acting County Assessor of said county; that since the filing of the original complaint in this cause, David H. Biles, a citizen and resident of Yavapai County, Arizona, has succeeded C. H. Riebeling as County Assessor of Yavapai County, Arizona, and is sued herein as such officer, having been substituted as a party defendant in place of the said C. H. Riebeling;

That at the time of the filing of the original complaint in this cause, W. M. Byers, and C. C. Jackson were citizens and residents of Yavapai County, Arizona, and were duly elected, qualified and acting members of and constituted the Board of Supervisors of Yavapai County, Arizona, and were made

[233] parties defendant hereto as such officers; that at the filing of the original complaint in this cause, T. B. Jones was the third member of said Board of Supervisors and was made a party defendant hereto as such officer; that thereafter, said T. B. Jones was succeeded as a member of the said Board of Supervisors by R. W. Wingfield, a citizen and resident of Yavapai County, Arizona, who was regularly substituted for said T. B. Jones as a party defendant hereto, and that thereafter, said R. W. Wingfield was succeeded as a member of said Board of Supervisors by Ralph G. Reid, a citizen and resident of Yavapai County; that said Ralph G. Reid has been substituted for R. W. Wingfield as a party defendant hereto, and that said W. M. Byers, C. C. Jackson and Ralph G. Reid now constitute the duly elected, qualified and acting members of the Board of Supervisors of Yavapai County, Arizona, and are sued herein as such officers;

That at the time of the filing of the original complaint in this cause, Frank H. Thomas was a citizen and resident of Gila County, Arizona, and was the duly elected, qualified and acting County Treasurer and Ex Officio Tax Collector of said County; that after the filing of the original complaint in this cause, E. S. Bryant, a citizen and resident of Gila County, Arizona, succeeded the said Frank H. Thomas as the duly elected, qualified and acting County Treasurer of Gila County, Arizona, and was sued herein as such officer, having been made a party defendant in place of the said Frank H. Thomas; that thereafter, Cyril Kennedy, a citizen and resi-

dent of Gila County, succeeded the said E. S. Bryant as a party defendant hereto as such officer;

That W. G. Duncan, a citizen and resident of Gila County, Arizona, at the filing of the original complaint herein, was the duly elected, qualified and acting County Assessor of said county, and was sued herein as such officer; that Margaret T. [234] Harding, a citizen and resident of said Gila County, has succeeded the said W. G. Duncan as said County Treasurer and Ex Officio tax collector, and has been regularly substituted as a party defendant hereto, and is sued herein as such officers;

That the defendants, John H. Armer, Charles Curnow and L. F. Quinn, are citizens and residents of Gila County, Arizona, and are now and at all times herein mentioned were the duly elected, qualified and acting members of and have constituted and do now constitute the Board of Supervisors of said Gila County, and the County Board of Equalization of said county;

That at the time of filing the original complaint herein, Frank Luke, Thad M. Moore and D. C. O'Neil were residents of Maricopa County, Arizona, and were the duly elected, qualified and acting members of and constituted the State Tax Commission and State Board of Equalization of the State of Arizona; that thereafter the said Frank Luke died and was succeeded as such Tax Commissioner and member of the State Board of Equalization by C. W. Peterson, who was thereupon regularly substituted as a party defendant hereto in place of said Frank Luke, and that said C. W. Peterson is a citi-

zen and resident of Maricopa County, Arizona, and is now a party to this suit as a member of the Tax Commission and State Board of Equalization of the State of Arizona.

That all of the successor parties hereto have adopted the acts of their predecessors which have relation to the collection of the taxes herein sought to be enjoined and continue the threats of their predecessors to enforce payment of said taxes.

II.

That this is a suit of a civil nature, in equity, arising under the Constitution and laws of the United States, and [235] that the amount involved herein, exclusive of interest and costs, exceeds the sum or value of Three Thousand ($3,000.00) Dollars.

III.

That the plaintiff now exercises, and from and since the 11th day of February, 1935, has exercised in the City of Phoenix, and the Cities of Glendale and Mesa, in Maricopa County, Arizona, in the city of Tucson, and the Town of Ajo, in Pima County, Arizona, in the Town of Safford, Graham County, Arizona, in the City of Kingman, Mohave County, Arizona, and in the cities of Globe and Miami, and Town of Hayden, in Gila County, Arizona, in the Town of Clifton, Greenlee County, Arizona, in the Towns of Superior, Coolidge and Casa Grande, in Pima County, Arizona, and in the City of Prescott, Yavapai County, Arizona, normal banking powers conferred upon it by law as a national banking as-

sociation, including the receiving of commercial deposits, demand and time saving deposits, evidenced by certificates of deposit, the purchase and sale of government, state and municipal bonds, the maintenance of a trust department, the purchase and discount of commercial paper, the loaning of money on financial statements, and upon collateral security, and upon real estate and chattel mortgages executed to the plaintiff or assigned to and deposited with it as collateral security, and the investment of money in notes, bonds, and mortgages and other securities, and evidences of indebtedness.

IV.

That it was and is provided by Section 1, of Article IX of the Constitution of the State of Arizona, that all taxes shall be uniform upon the same class of property within the territorial limits of the authority levying the tax.

That it was and is provided by Section 2, of Article IX of the Constitution of the State of Arizona, that there shall [236] be exempt from taxation all federal, state, county and municipal property.

That it was and is provided by Section 3068, Revised Code of Arizona for 1928, that all taxable property within said State must be assessed at its full cash value, and that the term, "full cash value" shall mean the price for which property would sell if voluntarily offered for sale by the owner thereof upon such terms as such property is usually sold, and not the price that might be realized if such property were sold at a forced sale.

That it was and is provided by Section 3069, Revised Code of Arizona for 1928, as amended by Chapter 110, Session Laws of Arizona for 1931, that the property of corporations shall be assessed and taxed, and no assessment shall be made on shares of stock of corporations, nor shall any holder thereof be taxed for such shares, but that said provisions with reference to the taxing of shares of stock shall not apply to banking corporations, building and loan associations or corporations, and corporations or associations engaged in the business of using money wherewith to make money for the owners of their shares, and that the shares of stock of such banking corporations, and other corporations and associations shall be assessed and taxed as other property in the name of the shareholders of the several shares thereof, to be entered and taxed in the name of and be payable by such corporation or association.

V.

That it was and is provided by Section 11, of Article IX of the Constitution of Arizona, that the manner, method and mode of assessing, equalizing, and levying taxes in the State of Arizona, shall be such as may be prescribed by law.

That it was and is provided by Section 3074, Revised Code of Arizona, 1928, that between the first Monday in [237] January, and the first day of May, of each year, the County Assessor, (except as otherwise required by the State Tax Commission) shall ascertain by diligent inquiry and examination all

property in his county subject to taxation, the names of all persons owning, claiming, or having possession or control thereof, determine the full cash value of all such property, and list and assess the same to the person owning, claiming or having the possession, charge, or control thereof.

That it was and is provided by Section 3070, Revised Code of Arizona for 1928, that upon the demand of the Assessor the officers in charge of any banking corporation or corporations or associations engaged in the business of using money wherewith to make money, shall, make out and deliver to the assessor a sworn statement showing the number of shares, the name and residence of each shareholder, and the number of shares owned by him, the surplus, reserve fund and undivided profits, and the par and market value of the shares, and that the full cash value of such shares shall be ascertained according to the best information which the assessor may be able to obtain, whether from any return to any officer of the state or the United States, from actual sales of the stock, or from other trustworthy sources, and that every such shareholder shall, where such corporation or association is located, render at their full cash value to the assessor all shares owned by him therein, and if the shareholder fail to do so the assessor shall list and assess such unrendered shares as other unrendered property, and that the taxes due thereon shall be paid by such corporation or association, and shall be a lien against and assessed to such shares of stock, and no

such corporation or association shall pay any dividends to any shareholder who is in default in the payment of taxes due on his shares, nor shall it permit the transfer on its books of any shares the [238] owner of which is in default in the payment of his taxes on the same.

That it was and is provided by Section 3071, Revised Code of Arizona for 1928, that every such corporation or association for the purpose of said assessment shall be considered as located in every county, city or town wherein it has an office for the purpose of carrying on its business, and the shares shall be subject to taxation in any county, city or town wherein it has such office, that the officer of such corporation or association shall state in his statement if his association or corporation is subject to taxation in more than one county, city or town, and the proportion of its assets situated in each thereof, and that the shares of such corporation or association shall be taxed in each county, city or town, for only such portion of their assets as the assets situated in that county, city or town bear to the assets of the entire corporation or association, and that when a bank maintains branches or conducts business in more than one county, city or town, the assessed value of the capital stock shall be apportioned among the several counties, cities and towns in which the main office or such branches are maintained or business conducted, and the amount apportioned to each county, city or town

shall not be less than the actual cash value of the real and personal property of such bank situated in such county, city or town.

VI.

That on the 11th day of February, 1935, the day plaintiff engaged in the banking business as a national bank, the amount of its common capital stock was $260,000.00, its surplus was $260,000.00, its undivided profits were $90,026.52, making a total as a basis for the valuation of its shares of common stock of $610,026.52. That its common capital stock consisted of 52,000 shares, of the par value of $5.00 each. That to [239] provide the plaintiff with sufficient capital to enable it to comply with the laws and regulations pertaining to national banks in the acquisition and transaction of the banking business which it acquired on said 11th day of February, 1935, the Reconstruction Finance Corporation of the United States of America purchased from the plaintiff, and the plaintiff sold to said Reconstruction Finance Corporation, $1,240,000.00 par value of its preferred stock. That said preferred stock so issued and sold to said Reconstruction Finance Corporation consisted of 198,400 shares of the par value of $6.25 each, and that all of said preferred stock was issued to said Reconstruction Finance Corporation on or prior to said 11th day of February, 1935, and ever since the issuance thereof has been and now is owned and held by and is the property of the

Reconstruction Finance Corporation of the United States of America.

VII.

That on the first day of January, 1936, the amount of the common capital stock of plaintiff was $260,000.00, its surplus was $260,000.00, and its undivided profits were $101,367.14, making a total as the basis for the valuation of its common stock of $621,367.14. That on said date its common capital stock consisted of 52,000 shares of the par value of $5.000 each, and that the amount of its capital stock, surplus, and undivided profits, and the valuation of its shares of common stock, and the number of said shares remained substantially the same as it was on the first day of January, 1936, until after the first Monday in May, 1936.

VIII.

That on or about the 24th day of March, 1936, and prior to the first day of May, 1936, an officer of the plaintiff, duly authorized for said purpose, made and delivered a statement such as is provided for by Sections 3070 and 3071, Revised [240] Code of Arizona for 1928, to each of the assessors of the respective counties in which its main office, or any of its branches was situated, including all of the counties made parties defendant to this suit. That each of said statements showed the number of plaintiff's shares, the names and residences of each shareholder owning and holding the shares of its common stock, and the shares of its preferred stock

above mentioned, the number of shares owned by each shareholder, the amount of capital, surplus and undivided profits as above stated, and the par value of its shares, both common and preferred, as is required by Section 3071, Revised Code of Arizona, for 1928. Each of said statements showed the proportion of plaintiff's assets situated in each of the counties in which its principal office or a branch thereof was situated. That said statement showed the common capital stock of the plaintiff was $260,000.00, that its surplus was $260,000.00, and that its undivided profits were $101,367.14, making a total as a basis for the valuation of its common capital stock of $621,367.14. That said statement also showed that the following percentages of said amount were properly apportioned to the respective counties as follows, to-wit: Maricopa County, 63.54 per cent, Pima County, 16.88 per cent, Graham County, 2.73 per cent, Yavapai County, 2.92 per cent, Gila County, 7.26 per cent, Pinal County, 2.90 per cent, Greenlee County, 1.86 per cent, Mohave County, 1.91 per cent.

IX.

That the tax statutes hereinabove set forth, as now in force in the state of Arizona, have been governing tax laws of the state of Arizona for many years, and that for many years immediately prior to the year 1934, it was the universal practice followed by the County Assessors of the several counties of the state of Arizona, and approved by the

Tax Commission [241] of the State of Arizona, to value for tax purposes the shares of stock of each of the banks in the State of Arizona, at an aggregate amount equal to the capital stock, surplus and undivided profits of each of said banks, as shown by the books of said bank, and that in the year 1934, all or substantially all of the banks in the state of Arizona protested to the State Tax Commission of the State of Arizona, sitting as a State Board of Equalization, against the valuation of their shares of stock on said basis, for the reason that the same constituted an assessment of the capital stock of said banks at its full cash value, when other classes of property in said state, in pursuance of a general understanding among the tax officials of the state were assessed at an amount equal to 60% of their cash value, and that in the consideration of said protests, said State Tax Commission, sitting as a Board of Equalization, in the year 1934, made a thorough examination of the valuation of shares of bank stock in the state of Arizona, and after such examination ordered that shares of bank stock should be valued by the following method: (1) That the statements filed by said banks should be revised and corrected by the use of the best information available; (2) That the shares of stock should be valued at 75% of the capital stock, surplus and undivided profits as shown by said revision of the banks statement. That said Tax Commission made no determination with reference to the taxability of shares of preferred stock of banks owned and held

by Reconstruction Finance Corporation, and expressly left that question to be determined by the courts.

X.

That the State Tax Commission of the State of Arizona, said State Tax Commission consisting of the same individuals as the State Board of Equalization, in the exercise of its supervisory powers over the County Assessors of the State of [242] Arizona, directed the County Assessors of the several counties of the State of Arizona to value for tax purposes for the year 1935, the shares of stock of all banks in the state, at an amount equal to 75% of the capital stock, surplus and undivided profits of said banks, and that the county assessors of the several counties of the state, (except the County Assessor of Mohave County), in pursuance of said instructions of said State Tax Commission, valued for tax purposes for the year 1935, the capital stock of all banks in their respective counties at an amount equal to 75% of the capital stock, surplus and undivided profits of said banks, as shown by the statements filed by said banks.

XI.

That the State Tax Commission of the state of Arizona, said Tax Commission consisting of the same individuals as the State Board of Equalization, who are parties defendant to this suit, issued no instructions to the several county assessors of the state as to the method by which shares of stock

of banks should be valued in said year of 1936, and that as a result of the failure of said Tax Commission to issue such instructions, certain of the county assessors valued bank stock in their respective counties substantially in accordance with the instructions issued by the Tax Commission in the year 1935; that is to say, at 75% of the amount of the capital stock, surplus and undivided profits of said banks, and others of said county assessors valued the capital stock of the banks situated in their counties, at an amount equal to the full value of the capital stock, surplus and undivided profits of said banks, as shown by the books of said banks. That the capital stock of no bank other than the plaintiff was valued for tax purposes for the year 1936 at an amount in excess of 75% of the capital stock, surplus and undivided profits of said bank, the counties in [243] which the capital stock of the banks therein was valued at the full amount of the capital stock, surplus and undivided profits, in the year 1936, being counties in which no bank except the plaintiff was doing business, except Maricopa County, in which the valuation of the shares of stock of all banks therein was reduced to 75% of the capital stock, surplus and undivided profits by the State Board of Equalization.

XII.

That in the year 1934, the taxing officials of the State of Arizona, under the direction of the state Tax Commission and State Board of Equalization,

for the purpose of equalizing the valuation of shares of bank stock with the valuation of other kinds and classes of property, adopted the general plan or policy of assessing the stock of all banks at an amount equal to .75% of the book value of the stock as shown by the bank's statement after proper checking and inquiry satisfied them that the statement fairly reflected the bank's condition. That said general plan or policy was continued to the year 1939, or perhaps longer.

XIII.

That the assessments of plaintiff's shares of stock in the counties of Mohave and Pinal, for the year 1936, were in accord with the aforesaid general plan or policy and were not contested by plaintiff.

XIV.

That the County Assessor of Maricopa County, made his valuation of the plaintiff's shares of stock for tax purposes for the year 1936 in the manner following: He added together the amount of the common capital stock, surplus and undivided profits shown by the statement filed with him by plaintiff as aforesaid, and added to the amount so arrived at the sum of $1,240,000.00, being the par value of the preferred stock of [244] the plaintiff, issued to and owned and held by the Reconstruction Finance Corporation, as hereinbefore alleged, the total so arrived at being the sum of $1,861,367.14. Said County Assessor then took 63.54 per cent of said sum, (said 63.54 per cent being the percentage shown by the

statement filed with him by the plaintiff as the percentage properly apportioned to Maricopa County), thus arriving at $1,182,712.68, as the amount apportioned to Maricopa County, which sum said assessor placed on the tax roll as the assessable value of plaintiff's shares of stock for tax purposes for the year 1936, in said Maricopa County. That of the aforesaid valuation of $1,182,712.68, 63.54 per cent of the sum of $1,240,000.00, or $787,896.00 was and is the valuation placed by said County Assessor upon Maricopa County's proportion of the shares of preferred stock of the plaintiff, owned and held by the Reconstruction Finance Corporation. That said County Assessor intended to and did assess plaintiff's shares of preferred stock owned and held by Reconstruction Finance Corporation at said amount of $787,896.00.

XV.

That the County Assessor of Pima County valued the shares of stock of the plaintiff in his county in the year 1936 by placing a valuation on the several items of tangible real and personal property owned and held by the plainitff in said county, and totaling said valuations of said items of real and personal property and taking said total as the actual cash value of that portion of the capital stock of the plaintiff assessable in Pima County. That the valuation so arrived at by said County Assessor of Pima County was and is $318,510.00.

That the assessment made by said assessor does

not show whether said valuation was intended to be imposed upon plaintiff's common capital stock or upon plaintiff's preferred stock. If said valuation is construed as imposed upon plain- [245] tiff's common stock, it amounts to a valuation of that portion of plaintiff's shares of common stock assessable in Pima county of $6.125 per share, which is the equivalent of a total valuation of plaintiff's shares of common stock in all counties of $36.78 per share.

XVI.

That the aforesaid valuation by the County Assessor of Pima county was excessive and illegal to the extent following: The total of the common capital stock of $260,000.00, the surplus of $260,000.00, and the undivided profits of $101,367.14, is $621,367.14, which represents the shares of common capital stock of the plaintiff. Of this amount, 16.88 per cent, or the sum of $104,886.77, is properly apportioned to Pima county, representing that portion of plaintiff's shares of common stock apportioned to Pima County. To make allowance for probable shrinkage in book assets and the normal difference between the book value of the assets and the actual value of the shares of stock and to equalize with valuation of other kinds and classes of property, in accordance with the method prescribed by the State Tax Commission as aforesaid, one-fourth thereof, or the sum of $26,221.69 must be deducted, leaving the amount of $78,665.08, as the actual cash value for the year 1936, of that portion of plain-

tiff's shares of common stock which is assessable in Pima County. That the excess over said sum of $78,665.08 assessed against the shares of stock of plaintiff by the County Assessor of Pima County, which is the amount of $239,844.92, was assessed on account of values represented by plaintiff's preferred stock, owned and held by the Reconstruction Finance Corporation.

XVII.

That the County Assessor of Graham County valued the shares of stock of the plaintiff in his county in the year [246] 1936 by placing a valuation on the several items of tangible real and personal property owned and held by the plaintiff in said county and totaling said valuation of said items of real and personal property, and taking said total as the actual cash value of that portion of the capital stock of the plaintiff assessable in Graham county. That the valuation so arrived at by said County Assessor of Graham County was and is $22,470.00. That the assessment made by said assessor does not show whether said valuation was intended to be imposed upon plaintiff's common capital stock or upon plaintiff's preferred stock. If said valuation is construed as imposed upon plaintiff's common stock, it amounts to a valuation of that portion of plaintiff's shares of common stock assessable in Graham County of $0.432 per share, which is the equivalent of a total valuation of plaintiff's shares of common stock in all counties of $15.83 per share.

That the aforesaid valuation by said County Assessor of Graham county was and is excessive and illegal to the extent following: The total of the common capital stock of $260,000.00, the surplus of $260,000.00, and the undivided profits of $101,367.14, is $621,367.14, which represents the shares of common capital stock of the plaintiff. Of this amount, 2.73 per cent, or the sum of $16,963.32, is properly apportioned to Graham county, representing that portion of plaintiff's shares of common stock apportioned to Graham county.

From said sum must be deducted one-fourth thereof, or the sum of $4,240.83, to make allowance for probable shrinkage in book assets and the normal difference between the book value of the assets and the actual value of the shares of stock and to equalize valuations with other kinds and classes of property in accordance with the method prescribed [247] by the State Tax Commission as aforesaid, leaving the amount of $12,722.49, as the true valuation for tax purposes for the year 1936, of that portion of plaintiff's shares of common stock which is assessable in Graham county. That the valuation arrived at by the County Assessor of Graham county in excess of said sum of $12,722.49, said excess being $9,747.51, was assessed upon values represented by preferred stock of the plaintiff owned and held by the Reconstruction Finance Corporation.

XVIII.

That the County Assessor of Yavapai County made his valuation of plaintiff's shares of stock for

tax purposes for the year 1936 in the manner following: He added together the amount of the common capital stock, surplus and undivided profits shown by the statements filed with him by plaintiff as aforesaid, the total so arrived at being the sum of $621,367.14. Said County Assessor then took 2.92 per cent of said sum, (said 2.92 per cent being the percentage shown by the statement filed with him by the plaintiff as the percentage properly apportioned to Yavapai county), thus arriving at $18,143.92 as the amount apportioned to Yavapai County, and then deducted one-fourth of said amount, leaving the sum of $13,607.94 as the assessable value of that portion of plaintiff's shares of common stock properly apportioned to Yavapai County.

That said valuation so made by the County Assessor of Yavapai county was satisfactory to plaintiff, and plaintiff made no objection thereto, either before the County Board of Equalization, or the State Board of Equalization.

XIX.

That the County Assessor of Gila county made his valuation of plaintiff's shares of stock for tax purposes for the year 1936 in the manner following: He added together the amount of the common capital stock, surplus and undivided profits [248] shown by the statement filed with him by plaintiff as aforesaid, the amount so arrived at being the sum of $621,367.14. Said county assessor then took

approximately 7.26 per cent of said sum, (said 7.26 per cent being the percentage shown by the statement filed with him by the plaintiff as the percentage properly assessable to Gila county), thus arriving at $45,110.00 as the amount apportioned to Gail county, which sum said assessor placed on the tax roll as the assessable value of plaintiff's shares of stock for tax purposes for the year 1936 in said Gila county. That said valuation so made by the county assessor of Gila county resulted in a valuation of plaintiff's shares of common stock in that county at 100 per cent of its book value when the shares of stock of all other banks in the state were equalized with the valuations of other kinds and classes of property at 75 per cent of their book value.

XX.

That within the time provided by law, plaintiff filed a written protest against the foregoing valuations of its shares of stock herein complained of with the County Board of Equalization in each of the counties of Maricopa, Pima, Graham and Gila, being all of the counties in which the valuations of its shares of stock are complained of herein, except Yavapai county, in which county the valuation made by the county assessor was afterwards attempted to be increased by order of the State Board of Equalization as hereinafter set forth.

Plaintiff further, within the time provided by law, appeared before the County Board of Equalization in each of said counties in which it filed written

protests as aforesaid, and urged the correction and reduction of the said assessments in all respects herein complained of. That each of said County Boards of Equalization heard the plaintiff and refused and [249] denied any relief to the plaintiff.

XXI.

That none of the aforesaid county Boards of Equalization made any changes in the valuations made as aforesaid by the respective county assessors upon the shares of stock of the plaintiff and that the clerk of each of said boards of supervisors, immediately after the July adjournment of said Boards of Equalization, transmitted to the State Board of Equalization the respective valuations made as aforesaid by the respective county assessors, which valuations were as follows, to-wit:

Maricopa County	$1,182,712.68
Pima County	318,510.00
Graham County	22,470.00
Yavapai County	13,607.94
Gila County	45,110.00

XXII.

That on or about the 5th day of August, 1936, the plaintiff filed a written protest with Frank Luke, Thad M. Moore and D. C. O'Neil, sitting as a State Board of Equalization of the State of Arizona, protesting against the valuations of its shares of stock in Maricopa County, Pima County, Graham County and Gila County, but making no pro-

test whatsoever against the valuation of its shares of stock in Yavapai County; that said protests against the valuations in Maricopa County, Pima County, Graham County and Gila County, set forth all of the objections to said valuations hereinbefore set forth, and on said 5th day of August, 1936, the plaintiff appeared before said Frank Luke, Thad M. Moore and D. C. O'Neil, sitting as a State Board of Equalization, and urged the correction and reduction of said valuations of its shares of stock in Maricopa County, Pima County, Graham County and Gila County, in all respects herein complained of, but plaintiff made no objection, or urged no correction in the assessment of its shares of stock in Yavapai connty; that said defendants, sitting as a Board of [250] Equalization, heard the plaintiff and took plaintiff's protest and objections under consideration, but did not advise plaintiff that they contemplated making any change whatsoever in the valuation placed upon plaintiff's shares of stock in Yavapai County.

XXIII.

That thereafter, and within the time provided by law, the said State Board of Equalization, as a result of its consideration of the protest of the plaintiff and of the protests of other banks situated in Maricopa County, ordered a reduction of 25% from the valuation of plaintiff's shares of stock in Maricopa County; that is to say, it reduced said valuations from $1,182,712.68 to $887,034.51. That the valuations of the shares of stock of all other banks

in Maricopa County were reduced a like percentage by said State Board of Equalization.

XXIV.

That said reduction of the valuations made by the county assessor of Maricopa county of the shares of bank stock in said county, left no bank in the state of Arizona, except the plaintiff, with an assessment upon its shares of stock in excess of 75% of the capital stock, surplus and undivided profits as shown by the books of said bank. That said State Board of Equalization denied any relief to the plaintiff with reference to the valuations placed upon its preferred stock or values represented by said preferred stock by the county assessor of Maricopa county, and denied all relief prayed by plaintiff with reference to the valuations placed upon its shares of stock in the counties of Pima, Graham and Gila, and left the valuations as made by the county assessors in said counties stand as hereinbefore set forth. That with respect to Yavapai County, said State Board of Equalization, without notice to plaintiff as provided by said Section 3065, Revised Code of Arizona for 1928, [251] attempted to increase the assessed valuation of plaintiff's shares of stock in Yavapai county, from the sum of $13,607.94, to the sum of $40,763.84, by attempting to add the sum of $27,155.90, as an assessment upon the preferred stock of the plaintiff held by the Reconstruction Finance Corporation. That said State Board of Equalization arrived at said amount of $27,155.90,

by valuing plaintiff's shares of preferred stock at 75% of their par value, or $960,000.00, and apportioning 2.92%, (being the percentage of its assets apportioned to said county by plaintiff in its statement) of said sum to Yavapai County. That after the action of the State Board of Equalization upon the valuations of plaintiff's shares of stock, said valuations were as follows:

Maricopa County	$887,034.51
Pima County	318,510.00
Graham County	22,470.00
Yavapai County	40,763.84
Gila County	45,110.00

That the said State Board of Equalization before fixing the above figures considered the valuation of the shares of capital stock for the year 1936 of substantially all banks in the State of Arizona, and fixed the valuation of the shares of stock of all of said banks except the plaintiff at an amount equal to 75% of their capital stock, surplus and undivided profits; that in the case of the plaintiff it declined to fix the valuation of plaintiff's shares of stock on the same basis for the reason that the plaintiff had issued preferred stock, owned and held by the Reconstruction Finance Corporation, and that said State Board of Equalization fixed, or allowed to stand as they had been fixed by the Tax Assessors, the valuations herein shown in excess of 75% of plaintiff's common capital stock, surplus and undivided profits, solely by reason of the fact

that it determined that plaintiff ought not to escape taxation on its shares of preferred stock, and that [252] solely by reason of the existence of such preferred stock said State Board of Equalization added the excess amounts above stated to 75% of the common capital stock, surplus and undivided profits as shown by plaintiff's statement, with the object and purpose of requiring plaintiff to pay a tax upon valuations represented by its preferred stock owned and held by the Reconstruction Finance Corporation.

XXV.

That within the time provided by law the said State Board of Equalization fixed the rate of taxation to be levied for state purposes, and transmitted to the Board of Supervisors of each of the respective counties that are parties defendant to this suit a statement of the changes which it had made in the assessment and the rate of tax which was to be levied and collected within said county for state purposes, and each of said Board of Supervisors received said statement and ordered placed on the tax roll the respective valuations made by the respective county assessors as hereinabove alleged as ordered changed by said State Board of Equalization, and that there were thereupon placed upon said tax rolls, and that there now appear on said tax rolls of each of the five counties herein complained of, the following valuations, to-wit:

County	Valuation on Tax Rolls
Maricopa County,	$887,034.51
Pima County,	318,510.00
Graham County,	22,470.00
Yavapai County,	40,763.84
Gila County,	45,110.00

That said valuations are excessive, illegal and void to the extent and for the reasons following:

Said valuation in Maricopa county is excessive and illegal in the sum of $590,922.00, by reason of the fact that said sum is the valuation placed by the State Board of Equalization upon that portion of the $1,240,000.00 preferred stock [253] of the plaintiff apportioned to Maricopa county.

Said valuation in Pima county is excessive and illegal in the sum of $239,844.92, for the reason that said sum, while attributed to values represented by tangible real and personal property in Pima county, in reality represents a portion of the valuation attributed to Pima county of the $1,240,000.00 par value of preferred stock of the plaintiff, owned and held by the Reconstruction Finance Corporation.

Said valuation in Graham county is excessive and illegal in the sum of $9,447.51, for the reason that said sum, while attributed to values represented by tangible real and personal property in Graham county, in reality represents a portion of the valuation attributable to Graham county of the $1,240,000.00 par value of preferred stock of the plaintiff, owned and held by the Reconstruction Finance Corporation.

Said valuation in Yavapai county is excessive and illegal in the sum of $27,155.90, for the reason that said sum was directed to be added to the tax roll by the State Board of Equalization as the value of the portion assessable in Yavapai county of the $1,240,000.00 of preferred stock of the plaintiff owned and held by the Reconstruction Finance Corporation.

Said valuation in Gila county is excessive and illegal to the extent of $11,276.66, being approximately one-fourth of the amount of the valuations of the common stock of the plaintiff, arrived at by the County Assessor of Gila county for the reason that said County Assessor and the State Board of Equalization made no reduction from the full-book value of the shares of common stock of the plaintiff in Gila county, as they did of the valuation of the shares of stock in counties of the state in which other banks were situated, to equalize the value of plaintiff's shares of stock with valuations placed on the shares of stock of other banks, and other classes of property [254] and moneyed capital in the hands of individual citizens of the state coming into competition with the business of national banks.

XXVI.

That after the completion of the valuation of plaintiff's shares of stock, and the placing thereof on the tax rolls as aforesaid in the respective counties, the Board of Supervisors and the governing bodies of the cities and towns of each of said coun-

ties, (except the City of Phoenix, Maricopa county), finally determined the estimates provided for by Section 3098, Revised Code of Arizona for 1928, and the School Superintendents in said counties furnished to said Boards of Supervisors the estimates provided for by Section 1090, Revised Code of Arizona, 1928, and said Boards of Supervisors assessed taxes for the several amounts estimated as well as the state taxes, at the rate fixed aforesaid upon the taxable property of the county, computed and carried out the real and personal property tax and total tax of every person on said tax rolls, and computed at the proper tax rates determined by the Board of Supervisors, and the State Board of Equalization, upon the aforesaid valuations and entered upon the said tax rolls as taxes upon the shares of stock of the shareholders of the plaintiff and as payable by the plaintiff, the following amounts, to-wit:

Maricopa County	$44,911.17
Pima County	20,048.36
Graham County,	1,334.22
Yavapai County,	2,025.98
Gila County	5,728.90

That upon the completion of the tax rolls for the year 1936, said tax rolls containing thereon the respective items of taxes set forth above, the Chairman of the Board of Supervisors of each of said counties as prescribed by statute, annexed thereto under his hand, a warrant commanding the county

treasurer and ex officio tax collector to col- [255] lect from the several persons named in said tax roll, including plaintiff, one-half of the taxes set opposite their respective names, including all taxes, taxed, assessed and levied aforesaid, on or before the first Monday in November, 1936, and the other one-half of said taxes on or before the first Monday in May, 1937. That said tax rolls, together with said warrants, were delivered to the respective county treasurers of said counties, parties defendant hereto, in the manner and within the time provided by law.

XXVII.

That upon receipt of said assessment and tax roll, each of said county treasurers, being parties defendant hereto, gave official notice specifying that one-half of said taxes, including said illegal and void taxes so levied and assessed upon plaintiff's said shares of stock would be due and payable on the first Monday in September, 1936, and would become delinquent on the first Monday in November in 1936, at 5:00 o'clock P. M., and that the remaining one-half of said taxes would be due and payable on the first Monday in March, 1937, and would become delinquent on the first Monday in May, 1937, at 5:00 o'clock P. M., and that unless said taxes were paid prior to becoming delinquent, interest would accrue thereon from the time of such delinqueney at the rate of ten per cent per annum until paid, or until said property or such part thereof as was necessary had been sold, and thereafter, interest would

accrue thereon at the rate provided in the tax certificates issues covering the sale of said property, but not to exceed fifteen per cent per annum.

XXVIII.

That before the first Monday in November, 1936, and before the filing of this Bill of Complaint, and during the [256] regular office hours of the respective county treasurers who are parties defendant hereto, plaintiff tendered and offered to pay to each of said county treasurers the amount of taxes which plaintiff believes to be *justly due and owing by the* owners and holders of its shares of common stock to said county treasurers for said county and local taxes for the whole year of 1936. The amounts which the plaintiff so tendered and offered to pay to each of said county treasurers are as follows:

Maricopa County,	$14,983.29
Pima County,	4,900.84
Graham County,	673.71
Yavapai County,	677.32
Gila County,	4,296.68

That plaintiff determined the amounts so above tendered by computing the valuations of its common capital stock in the manner in which said county treasurers and State Board of Equalization computed the same, excluding, however, from said computation plaintiff's shares of preferred stock owned and held by the Reconstruction Finance Corporation, and the assets represented thereby. That is,

to say, plaintiff added together its common capital stock of $260,000.00, its surplus of $260,000.00, its undivided profits of $101,367.14, making the sum of $621,367.14, and then took the proper percentage thereof apportioned to each of said counties, to-wit, Maricopa County, 63.54 per cent, Pima county, 16.88 per cent, Graham county, 2.73 per cent, Yavapai county, 2.92 per cent, Gila county, 7.26 per cent, thus making the actual values of plaintiff's shares of common stock in each of said counties as follows:

Maricopa County,	$394,816.68
Pima County,	104,886.77
Graham County,	16,963.32
Yavapai County,	18,143.92
Gila County,	45,110.00
	(approximately)

and then took 75% of each of said amounts, thus arriving at a taxable value in each of said counties for plaintiff's shares of common stock as follows:

[257]

Maricopa County,	$296,112.51
Pima County,	78,665.08
Graham County,	12,722.49
Yavapai County,	13,607.94
Gila County,	33,832.50

and computed the tax at the respective rates as fixed in said counties by the proper authorities thereon, thus arriving at the tax in each of said counties af the above amounts.

That the amount so tendered by plaintiff is the amount of taxes which would have been assessed against its shares of common capital stock in the several counties that are parties defendant hereto by the action of the assessing officials and State Board of Equalization if said taxing officials and State Board of Equalization had applied the same basis of valuation to plaintiff's shares of common capital stock as they applied to the shares of other banks, state and national, doing business in the State of Arizona, and is likewise the amount that the taxing officials and the State Board of Equalization would have assessed plaintiff's shares of common capital stock if they had not attempted to impose additional taxes upon plaintiff by reason of the fact that preferred shares of stock of the plaintiff were owned and held by the Reconstruction Finance Corporation.

XXIX.

That each of the said county treasurers aforesaid refused and continues to refuse to accept payment of the amount tendered upon the ground that said amount tendered was not the full amount of taxes assessed to and payable by plaintiff for the purposes for which it was tendered. That each of said county treasurers, on refusing said tender, declared that it was his duty to collect from plaintiff the amount of taxes assessed against plaintiff's shares of stock that appeared on his books, and that he would proceed to collect the same in accordance with the laws of the State of Arizona. [258]

That plaintiff has been and is willing and able, and has stood ready and will continue to stand ready to pay to each of the above mentioned county treasurers the amounts tendered as aforesaid, and that if it shall be held in this case that the sums which plaintiff has tendered and offered to pay to the said county treasurers, or any of them, for the purposes for which said tenders were made, are less than the amounts found justly and equitably due and owing by the plaintiff to the said county treasurers, or any of them, for 1936 taxes, plaintiff stands ready, able and willing to pay, and will pay to the said county treasurers, and each of them, such other and further sum or sums as shall be found to be just and equitable.

XXX.

That it was and is provided by Section 3101, Revised Code of Arizona for 1928, as amended by Chapter 106, Session Laws of Arizona for 1931, that all taxes levied upon real or personal property shall be a lien upon the property assessed, which lien shall attach on the first Monday in January in each year and shall not be satisfied or removed until such taxes, penalties, charges and interest are paid or the property is finally vested in a purchaser under a sale for taxes, and that said lien shall be prior and superior to all other liens and encumbrances upon said property, except liens and encumbrances held by the state of Arizona. That it is further provided by said section, amended as aforesaid, that personal property shall be liable for taxes levied on real

property and real property shall be liable for taxes levied on personal property, and that a judgment against real property for non-payment of taxes thereon or assessed to the personal property of the same person shall not be prevented by showing that the owner thereof was possessed of personal property out of which the taxes could have been made.

That it was and is provided by Section 3070, Revised Code (259] of Arizona, 1928, that the taxes due upon shares of banking corporations or associations shall be paid by such corporation or association and shall be a lien against and assessed to such shares of stock and no such corporation or association shall pay any dividends to any shareholder who is in default in the payment of taxes due on his shares, nor shall it permit the transfer on its books of any shares the owner of which is in default in the payment of his taxes on the same.

That it was and is provided by Section 3112 of the Revised Code of Arizona, 1928, that the county treasurer may at any time after receiving the tax roll, collect by distraint and sale, if not otherwise collected, the taxes due on personal property; that the sale must be at public auction after one week's notice of the time and place thereof, and must be of a sufficient amount of the property issued to pay the taxes, fees and costs, and that on payment of the purchase price and the delivery of the property with a bill of sale thereof, title thereto vest in the purchaser.

That it was and is provided by Section 15 of Title 103 of Arizona Session Laws of 1931, that taxes upon real estate if unpaid, shall become delinquent, first half, on the first Monday in November, and second half, on the first Monday in May, of each year, and that it was and is provided by Section 17 of said Chapter 103, that all taxes shall bear interest from the time of delinquency at the rate of ten per cent per annum until paid, and a fraction of a month shall be counted as a whole month, and that it was and is further provided by Section 18 of said Chapter 103, that all real property upon which the taxes, including personal property taxes secured thereby are unpaid and delinquent, shall be subject to sale as in said chapter provided. [260]

XXXI.

That the taxes levied and assessed upon plaintiff's shares of stock for the year 1936 in the manner aforesaid, whether legal or illegal, became payable on or before the second day of November, 1936.

Plaintiff in the year 1936, and at all times since, has owned and held real estate in all of the counties which are parties defendant to this suit, except Yavapai County.

That many of the owners and holders of plaintiff's shares of stock owned and held during the year 1936, and now own and hold real estate in one or more of said counties, and that the aforesaid illegal taxes are an apparent lien or cloud upon the real estate owned by the plaintiff in the respective

counties and upon the real estate of the shareholders of the plaintiff in the respective counties as well as upon said shares of stock and that said shares of stock on said 2nd day of November, 1936, became subject to seizure and sale for said taxes in the manner provided by the Statutes of Arizona above set forth.

That it was impossible for plaintiff to determine from the assessments made in Pima and Graham counties whether the taxes imposed in said counties were imposed solely on plaintiff's shares of common stock or upon both common and preferred shares and if plaintiff assumed that said taxes were imposed upon both classes of stock, it was impossible to apportion the same between the common and preferred shares. Hence, if plaintiff paid said taxes as demanded by the treasurers of said two counties it would not know to which class of its shareholders to charge said payment, or if it charged the same to both classes, it would not know what amount to charge to each, and if it attempted to secure reimbursement by withholding payment of dividends or refusing transfers of shares, it would subject itself to a separate suit for damages by each of its [261] shareholders.

That plaintiff filed its original Bill of Complaint in this court before the second day of November, 1936, and prayed for the issuance of a temporary injunction restraining the defendants from proceeding to collect the taxes complained of; that after said complaint was filed, a stipulation was entered

into by and between the plaintiff and the several defendants by which it was stipulated and agreed that the several defendant county treasurers would accept the amount of taxes theretofore tendered by the plaintiff to each of them without prejudice to their right to collect the remainder at any future time and that the plaintiff might withdraw its application for temporary injunction and that the said defendants would refrain from proceeding to enforce collection of the taxes alleged by plaintiff to be illegal during the pendency of this suit, but that said defendants or any of them should have the right at any future time to proceed to collect said taxes in the manner they thought proper and that if they did so proceed, or threaten to proceed, plaintiff should have the right to renew its application for temporary injunction. That said stipulation expressly provided that the rights of any party to prosecute or defend this suit should not be prejudiced or affected in any way by said stipulation, or anything done in pursuance thereof except in so far as said stipulation expressly provided therefor. That said stipulation was approved by an Order regularly made and entered by the court.

That on or about the 10th day of April, 1939, the County Treasurer of Pima County gave notice to the plaintiff that he would proceed to collect all of the taxes assessed in his [262] county against plaintiff's shares of stock for the year 1936, including those alleged to be illegal by the plaintiff, as well as those admitted to be legal.

That by reason of the aforesaid action of the County Treasurer of Pima county, all of the defendants renewed their threat to enforce collection of the taxes hereby sought to be enjoined. That those county officers made parties defendant hereto who have come into office since filing the original Bill of Complaint continue the threat of their predecessors to enforce collection of said taxes.

XXXII.

That it was and is provided by Section 3065, Revised Code of Arizona for 1928, that a taxpayer dissatisfied with the amount of his assessment as reviewed by the State Board of Equalization may appeal from said assessment to the Superior Court of the county where the taxes are payable; that the remedy of such appeal was and is not available to the plaintiff to relieve it from the burden of the illegal taxes herein complained of for the following reasons:

1. That said appeal is by said Section 3065 limited to a determination of the full cash value of the property assessed, and does not give the party appealing the right to question the legality of the tax imposed or any part thereof.

2. That the judgment of the court on such appeal is by said Section 3065, limited to finding the full cash value of the property assessed and said judgment cannot provide for the elimination from the assessment of property illegally or wrongfully assessed.

3. That such appeal would have to be taken separately from the valuation made by each of the five counties to the Superior Court of that county. The question of apportionment among said five counties would have to be determined separately in [263] each of said counties without an opportunity for any county, except the one in whose Superior Court the particular suit was pending, to be heard on said question, with the result that there would probably be five different decisions and five different appeals to the Supreme Court, all of which would have to be determined without opportunity for the several counties to directly contest their respective contentions.

4. That no such appeal can be taken unless the appellant first pays to the said county treasurer the amount of taxes levied against his property, and unless so paid the appeal must be dismissed by the court, and there is no provision for the county treasurer withholding the disbursements of the money paid by appellant until the determination of said appeal and the judgment on the appeal, if in favor of the appellant can only be a judgment against the county for the amount of the excess taxes paid.

5. That said appeal lies only to the Superior Court of the county in which the tax is assessed and is not available in a Federal Court; that such appeal is a judicial and not an administrative remedy and plaintiff, under the constitution and laws of the United States, is not obliged to resort thereto but may bring its action in a Federal Court of Equity.

XXXIII.

That it was and is provided by Section 55 of Chapter 103 of Arizona Session Laws for 1931, that no person upon whom a tax has been imposed under any law relating to taxation shall be permitted to test the validity thereof either as plaintiff or defendant, unless such taxes shall first have been paid to the proper county treasurer together with all penalties thereon and that no injunction shall ever issue in any court or proceeding in any court against the state or against any county, municipality or officer thereof, to prevent or enjoin the col- [264] lection of any tax levied.

That it was and is provided by the aforesaid Section 53, that after payment of taxes an action may be maintained to recover any tax illegally collected, and if the tax due shall be determined to be less than the amount paid, the excess shall be refunded in the manner "hereinbefore provided", but that said Chapter 103, Arizona Session Laws of 1931, wholly fails to provide in what manner said refund may be made.

That it was and is provided by Section 876 of the Revised Code of Arizona for 1928, that the treasurers of the several counties shall transmit to the state treasurer all money in the county treasury belonging to the state, or collected for it within ten days after receipt of a letter from the state treasurer to that effect.

That it was and is provided by Section 3107, Revised Code of Arizona for 1928, that the county

treasurer shall pay to the treasurer of each city or town in his county, on the first day of each month in each year, all money in his hands collected for the previous month on taxes for said city or town.

That it was and is provided by Section 1029, Revised Code of Arizona for 1928, that the county treasurer shall receive and hold as a special fund all school moneys, and keep a separate account thereof, and when it is apportioned among the school districts, shall keep a separate account for each district, notify the County School Superintendent on the first of each calendar month of the amount of the county school fund and special district funds on hand in the treasury to the credit of such fund, and pay over on the warrants of the county school superintendent duly endorsed by the person entitled to receive the same, any and all such money.

That there is no provision in the laws of the state of Arizona requiring or permitting county treasurers to withhold [265] from apportionment or distribution to the state or city or towns, or school districts, or other legal subdivisions therein, any tax money paid to them under protest or as a condition precedent to the appeal provided by Section 3065, Revised Code of Arizona for 1928, from the valuation fixed by the State Board of Equalization.

XXXIV.

That the Supreme Court of the state of Arizona has construed Section 55, Chapter 103 of the Session Laws of Arizona for 1931, so as to give a taxpayer

who pays taxes under protest and sues to recover the same an ordinary judgment against the county into whose treasury the money is paid by the taxpayer. That said court has construed said Section 55 as not creating a trust fund of the tax money paid under protest, and as not requiring the county treasurer to withhold distribution of said tax moneys so paid under protest, and as not requiring said county treasurer to refund the particular moneys paid to him, and has further interpreted said Section 55, together with sections construed together therewith as giving to the taxpayer who pays his taxes under protest merely the right to an ordinary judgment against the county on an equality with other general obligations of the county. As thus construed, said Section 55 gives to the taxpayer paying taxes under protest; if the taxes are shown to have been illegal, a judgment against the county which it is the duty of the Board of Supervisors of the county to pay out of funds in the county treasury not otherwise appropriated, or, if there are no such funds, it becomes the duty of the Board of Supervisors to budget the judgment as a county expense and levy a tax to pay it.

That if plaintiff had paid the taxes sought to be enjoined in this suit when the original complaint was filed and had brought immediate suits to recover the same and had promptly [266] obtained judgment against the respective counties parties hereto, it would in all probability have realized on

said judgments against the counties of Pima, Graham, Yavapai and Gila, within the period of one year from the date that the judgment became final, but that the financial affairs of the county of Maricopa at the time when the original complaint in this suit was filed and for some time thereafter were such that any judgment obtained by plaintiff against Maricopa County would have remained unpaid for three years from the date of said judgment; that the financial condition of Maricopa County began to improve immediately after the year 1935, and from and after approximately three years from the date of the filing of the original complaint herein, any judgment obtained against Maricopa County would have been paid within a year after it became final.

XXXV.

That the assessments made or attempted to be made on plaintiff's shares of stock in Pima and Graham counties are based upon a valuation of the tangible properties owned and held by plaintiff in said counties. That the taxing officials of said counties took the position that said method of valuation was justified by the concluding sentence of Section 3071 Revised Code of Arizona for 1928. At the time of the trial the taxing officials of said Pima County and Graham County took the position that any excess valuation imposed upon plaintiff's shares of stock in all of the counties by reason of the different methods of valuation prescribed by the first portion of said Section 3071, Revised Code of Arizona for

1928, which was followed by the counties other than Pima and Graham and that prescribed by the concluding sentence of said Section 3071, which was purported to be followed by said Pima and Graham Counties must be borne by plaintiff and its stockholders as additional valuation. This position was first taken by [267] Pima and Graham counties upon their filing of the joint and several answers of the defendants to the amended and supplemental bill of complaint which was filed in July, 1940, and that prior to said date plaintiff believed and was justified in believing that said Pima and Graham counties were attempting to cast the excess valuation produced by the different methods of assessment in the different counties upon the other counties in any proceeding involving said taxes and such issue, if it had been raised, could have been determined only in an equitable proceeding to which the several counties were parties.

That subsequent to the filing of the original complaint in this cause, at the time fixed by law for assessing taxes for the year 1937, the taxing officials of the several counties, parties hereto, and of other counties in the State of Arizona, in which plaintiff has branches, assessed taxes for the year 1937 upon plaintiff's shares of stock; that all of such assessments were reviewed at the proper time by the State Board of Equalization; that the said Board eliminated all values represented by plaintiff's preferred stock from such assessments for said 1937

taxes, except that in the case of Pima county the assessment was again made for an amount equal to the full value of the tangible, real and personal property owned by the plaintiff and situated in that county, said Pima county thus again assessing values represented by plaintiff's preferred stock owned and held by Reconstruction Finance Corporation, and said State Board of Equalization thus again declined to eliminate said value from said assessment and said Pima county imposed a tax of approximately $11,400.00 on values represented by plaintiff's preferred stock owned and held by Reconstruction Finance Corporation. Plaintiff did not appeal from the action of said Board of Equalization under Section 3065, Revised Code of Arizona for 1928, but paid the full tax assessed, under protest, [268] and sued to recover said sum of $11,400.00 from Pima county, or, in the alternative, if Pima county's method of assessment should be found correct by the court, to recover said sum pro rata from the other counties to which it was paid.

The trial court held that plaintiff's exclusive remedy provided by the State Law was by appeal to the Superior Court of the county, under Section 3065, Revised Code of 1928, and that plaintiff had no remedy to pay the tax under protest and recover the same under Section 55, Chapter 103, Session Laws of 1931. On or about June 30, 1941, and after this court had rendered its decision in favor of the plaintiff herein, the Supreme Court of Arizona re-

versed the said decision of the trial court holding that the remedy under Section 55, Chapter 103, Session Laws of 1931, was available to plaintiff. Prior to said decision of June 30, 1941, there was no decision by the Supreme Court of Arizona authoritatively passing upon the question. Said Supreme Court had once said by way of dictum that the remedy provided by Section 55, Chapter 103, Session Laws of 1931, was available only when the tax was assessed under an unconstitutional law, and again it had said by way of dictum that the remedy provided by Section 55, Chapter 103 Session Laws of 1931, was available whenever no other remedy was provided by law. There being conflicting declarations by it, said Supreme Court did not consider itself bound by their expression and deemed the question wholly open for future decision until it determined the question by its decision of June 30, 1941.

XXXVI.

That at no time prior to the decision of this court in plaintiff's favor was there available to plaintiff a plain, speedy and adequate remedy by payment of the illegal taxes, and suing to recover the same, and plaintiff is entitled to maintain this suit in equity for the purpose of preventing a multiciplicity of suits, and to obtain an adjudication of the proper apportionment of taxes between the several counties parties hereto.

XXXVII.

That by reason of the provisions in the statute of the state of Arizona, prohibiting the issuance of an injunction to prevent the collection of illegal taxes, plaintiff at all times prior to the decision of this court in plaintiff's favor, was without a plain, speedy and adequate remedy in the courts of the state of Arizona, and had no remedy [269] except in the United States District Court, for the District of Arizona.

XXXVIII.

That the plaintiff has exhausted all administrative remedies available to it under the statutes and laws of the state of Arizona.

XXXIX.

That plaintiff, unless granted the relief prayed for in its complaint, will suffer great and irreparable damage and injury, and will be subjected to a multiplicity of suits, and has no plain or adequate remedy at law.

XL.

That a large part of the taxes, the collection of which is herein sought to be enjoined is attempted to be levied and imposed upon the shares of preferred stock of the plaintiff owned and held by the Reconstruction Finance Corporation of the United States of America. That such levy and collection of taxes by the state or any subdivision or municipality thereof is expressly prohibited by the Act of Congress approved March 20, 1936, which act

expressly provides that such shares of preferred stock of national banks shall not be subject to taxation so long as they are owned and held by the Reconstruction Finance Corporation. That under the provisions of Sections 3069 and 3070, of the Revised Code of Arizona, 1928, no taxes are imposed upon national banking associations, but taxes are imposed upon the shareholders of such associations, and such associations are required to pay the taxes imposed on the shares of stock held by such shareholders as the agents of such shareholders. That under the provisions of said sections, it is the duty of plaintiff to pay any taxes legally levied upon its shares of stock, both common and preferred, and the penalties imposed by the statutes of Arizona will be imposed upon [270] the plaintiff if it fails to pay any such taxes so legally levied and imposed.

That under the provisions of said Sections 3069 and 3070, of the Revised Code of 1928, plaintiff is required to deduct any taxes paid by it as the agent of its shareholders from dividends becoming payable to its shareholders. That by the provisions of the Act of Congress, approved March 20, 1936, the Reconstruction Finance Corporation is precluded from permitting the plaintiff to deduct any taxes levied upon the shares of preferred stock owned and held by it, so that if plaintiff is compelled to pay the taxes imposed upon its shares of preferred stock as hereinbefore set forth, it will be compelled to pay taxes levied upon the property of another, which it

will have no means of recovering from the owner of said property, that is, the Reconstruction Finance Corporation, and that by being compelled to pay such taxes, plaintiff will be deprived of its property without due process of law.

That if it be held that any of the taxes sought to be enjoined herein are not levied or imposed upon plaintiff's shares of preferred stock the taxing officials or the State Board of Equalization of the state of Arizona have intentionally imposed taxes upon its shares of common stock at a greater rate than they have imposed taxes upon the shares of stock of all other banks, state and national, in the state of Arizona, in violation of Section 1 of Article IX of the Constitution of Arizona prohibiting discrimination in assessment of taxes upon the same class of property and also in violation of Section 548, Title 12, United States Code Annotated, providing that shares of stock in national banks shall not be taxed at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of the state coming into competition with the business of national banks. [271]

XLI.

That plaintiff herein claims the right, privilege and immunity under the constitution and laws of the United States, of not being subjected to the payment of taxes imposed upon its shares of preferred stock owned and held by the Reconstruction Finance Corporation, and also the right, privilege

and immunity of not being assessed for taxes on its shares of stock in violation of Section 548, Title 12, United States Code Annotated, and of not being deprived of its property without due process of law by an illegal and discriminatory assessment of taxes.

CONCLUSIONS OF LAW

I.

That the Act of Congress of March 20th, 1936, exempting preferred stock of banks from state and local taxation while such stock is owned and held by Reconstruction Finance Corporation, is constitutional. Those provisions of said Act which operate retroactively are of equal validity with those that operate prospectively. This case is not affected by the retroactive provisions as the taxes involved in this case were not levied until several months after said Act became a law.

II.

That the valuation imposed by Marjcopa county upon plaintiff's shares of stock for the tax year 1936 was to the extent of $590,922.00 imposed upon plaintiff's shares of preferred stock owned and held by Reconstruction Finance Corporation, and that the taxes levied by Maricopa County as payable by plaintiff for the tax year 1936 were to the extent of $29,927.88, levied upon plaintiff's shares of preferred stock which have at all times been owned and held by Reconstruction Finance Corporation.

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III.

That the valuation of $318,510.00 which Pima county claims it placed upon plaintiff's shares of common stock for the tax year 1936 was not made in accordance with the concluding sentence of Section 3071, Revised Code of Arizona for 1928, nor any other statute of the State of Arizona, and was void and of no effect to the extent of $239,844.92, which was imposed upon property values represented by plaintiff's preferred stock owned and held by Reconstruction Finance Corporation, and of the taxes levied by Pima county for the tax year 1936, as payable by plaintiff, $15,147.52 was void and uncollectable as levied upon values represented by plaintiff's preferred stock owned and held by Reconstruction Finance Corporation.

IV.

That the valuation of $22,470.00 which Graham county claims it placed upon plaintiff's shares of common stock for the tax year 1936 was not made in accordance with the concluding sentence of Section 3071 Revised Code of Arizona, 1928, nor any other statute of the State of Arizona, and was void and of no effect to the extent of $9,447.51, which was imposed upon property values represented by plaintiff's preferred stock owned and held by Reconstruction Finance Corporation, and of the taxes levied by Graham county for the tax year 1936 as payable by plaintiff, $660.51 was void and uncollectable as levied upon values represented by plain-

tiff's preferred stock owned and held by Reconstruction Finance Corporation.

V.

That the increase of $27,155.90 made in the valuation of plaintiff's shares of stock in Yavapai county by the direction of the State Board of Equalization was void and of no effect: (a) For the reason that no information of such proposed increase was given to the plaintiff, as is required by Section 3063, Revis- [273] ed Code of Arizona, 1928, and, (b) For the reason that said proposed increase was an attempt to assess the preferred stock owned and held by Reconstruction Finance Corporation. That the amount of said taxes attempted to be levied upon plaintiff's shares of stock on account of said proposed increase was the sum of $1,348.66, and was wholly void.

VI.

That the valuation placed by Gila county upon plaintiff's shares of stock for the tax year 1936 was invalid to the extent of $11,276.66, and of the tax levied for Gila county for the tax year 1936 as payable by plaintiff, $1,432.22, was invalid for the following reasons: (a) Said taxes were levied in violation of Section 548, Vol. 12, United States Code Annotated, prohibiting the taxation of shares of stock of national banks at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens coming into competition with the business of national banks, and (b) Said taxes

were levied in violation of Section 1 of Article IX of the Arizona Constitution, providing for uniformity in taxation of property of the same class.

VII.

That if defendants' contention that the valuations made by Maricopa, Pima and Graham counties were not in fact valuations of plaintiff's preferred stock or property values represented by such preferred stock, be accepted, it will necessarily follow that such valuations were illegal and void for the following reasons: (a) Each of them resulted in a violation of Section 548, Vol. 12, United States Code Annotated, prohibiting the taxation of shares of stock of national banks at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens coming in competition with the business of national banks, and (b) Each of them resulted [274] in a violation of Section 1 of Article IX of the Arizona Constitution requiring uniformity in the taxation of property of the same class.

VIII.

That the five counties parties defendant to this suit were properly joined to prevent a multiplicity of suits. While the assessments in some of the counties present questions not presented by the assessments in other counties the important questions of law and fact are presented by each of said assessments and should properly be determined in a single suit. The questions to be determined do not

involve separate taxes in the five different counties, but one tax imposed upon plaintiff's shares of stock under Section 3070, and apportioned among the several counties under Section 3071, Revised Code of Arizona, 1928.

IX.

That the appeal proceeding provided for by Section 3065 Revised Code of Arizona for 1928, is a judicial, not an administrative remedy, and is not available in the federal courts and that plaintiff under the federal law as it existed when this suit was begun, was not required to resort to such appeal proceeding.

X.

That the taxpayer is plaintiff in an appeal proceeding under Section 3065, Revised Code of Arizona for 1928, and is not entitled to remove such appeal proceeding to the federal courts.

XI.

That at all times prior to the decision of this court in plaintiff's favor, plaintiff had no plain and adequate remedy by paying the taxes sought to be enjoined and suing to recover them under Section 55, Chapter 103 Session Laws of 1931, for the reason [275] that under the decisions of the Supreme Court of Arizona, it is undetermined and doubtful if such remedy was available and a decision of the Superior Court of Pinal County, Arizona, received in evidence in this case, held it was not available.

XII.

That inasmuch as it appears from the record in this case that all taxes admitted to be owing to the respective defendants have been paid to the respective county treasurers, under stipulations in this case, and it is admitted by the defendants that the amount so paid, is the proper amount in the event plaintiff's legal contentions are sustained and the court has found the issues in plaintiff's favor, plaintiff is entitled to an injunction enjoining the several county treasurers, parties defendant hereto, from collecting any further taxes from the plaintiff or its shareholders for the year 1936, and plaintiff is entitled to its costs.

DAVE W. LING,
Judge.

Dated: October 8, 1941.

[Endorsed]: Received copy of within this 23rd day of June, 1941. Richard F. Harless, Leslie C. Hardy, Charles B. McAlister, Attorneys for Maricopa Co. et al. Joe Conway, Attorney General, State of Arizona.

[Endorsed]: Pltfs. Proposed Findings, etc. Filed Jun. 23, 1941. Edward W. Scruggs, Clerk, United States District Court for the District of Arizona. By: Wm. H. Loveless, Chief Deputy Clerk.

[Endorsed]: Findings of Fact and Conclusions of Law. Filed Oct. 8, 1941. Edward W. Scruggs, Clerk, United States District Court for the District of Arizona. By: Wm. H. Loveless, Chief Deputy Clerk. [276]

In the District Court of the United States
For the District of Arizona

No. E-350-Phoenix

THE VALLEY NATIONAL BANK OF PHOENIX,

Plaintiff,

vs.

MARICOPA COUNTY, et al.,

Defendants.

JUDGMENT ENJOINING COLLECTION OF TAXES

This cause came on regularly for trial on the 29th day of November, 1940, before the Honorable Dave W. Ling, Judge of the District Court of the United States for the District of Arizona, a jury having been waived by all parties to said cause. Evidence having been received and the trial concluded on said date, the case was submitted to the court for its consideration by counsel for the respective parties.

The court, after due consideration having found the issues in favor of plaintiff, and Findings of Fact and Conclusions of Law having been signed by the court and filed herein;

It Is Ordered, Adjudged and Decreed that the following taxes for the tax year of 1936, were legally levied against the holders of the shares of common

stock of the plaintiff and were payable by the plaintiff as and for state, county, school district and other local taxes (except City of Phoenix taxes) and were collectible by the respective County Treasurers of said counties from the plaintiff as follows:

Maricopa County	$14,983.29
Pima County	4,900.84
Graham County	673.71
Yavapai County	677.32
Gila County	4,296.68 [277]

That all other and further taxes levied or assessed or attempted to be levied and assessed as state, county, school district and other local taxes (except City of Phoenix taxes) in the above named counties for the year 1936, upon plaintiff's shares of stock or as payable by plaintiff were and are illegal and void.

That on or about the 7th day of December, 1936, the plaintiff entered into a stipulation with the respective County Treasurers who are parties to this suit, approved by the order of this court in this cause, by which it was provided that all of the above mentioned taxes found to be legal and valid would be paid by the plaintiff to the respective County Treasurers without prejudice to the further prosecution or defense of this suit, as to the balance of the taxes sought to be enjoined by the plaintiff. That in pursuance of said stipulation the plaintiff has paid to the treasurers of Maricopa, Pima, Graham,

Yavapai and Gila counties, respectively, the amount of the taxes hereinabove found to be legally assessed against plaintiff's shareholders and payable by the plaintiff in said counties.

That the defendants hereto have no legal right, power or authority to collect any further taxes for the year 1936, from the plaintiff.

That the defendants hereto have no legal right, power or authority to levy or cause to be levied any further taxes against the plaintiff or its shareholders, payable in the aforesaid counties as and for taxes for the year 1936.

It Is Further Ordered, Adjudged and Decreed that the respective county treasurers of the five counties herein named, their deputies, agents and servants, be and they hereby are permanently restrained and enjoined from collecting any further moneys from the plaintiff or its shareholders, as and for said county, school district or other local taxes for the year 1936 [278] (except City of Phoenix taxes), and that plaintiff have and recover from the defendants its costs herein incurred, to be taxed by the clerk of this court.

Done in open court this 8th day of October, 1941.

[Endorsed]: Received copy of within this 23rd day of Jun., 1941. Richard F. Harless, Leslie C. Hardy, Charles B. McAlister, Attorneys for Maricopa County, et al. Joe Conway, Attorney General, State of Arizona.

[Endorsed]: Pltfs. Proposed Judgment. Filed Jun. 23, 1941. Edward W. Scruggs, Clerk, United States District Court for the District of Arizona. By: Wm. H. Loveless, Chief Deputy Clerk.

[Endorsed]: Judgment. Filed Oct. 8, 1941. Edward W. Scruggs, Clerk, United States District Court for the District of Arizona. By Wm. H. Loveless, Chief Deputy Clerk. [279]

[Title of District Court and Cause—E-333.]

NOTICE OF APPEAL

Notice Is Hereby Given:

That Maricopa County, Arizona; W. H. Linville, as County Treasurer and Ex-Officio Tax Collector of Maricopa [280] County, Arizona; J. D. Brush, as County Assessor of Maricopa County, Arizona; Charles H. Fields, John A. Foote and George Frye, as Members of and constituting the Board of Supervisors and County Board of Equalization of Maricopa County, Arizona; Pima County, Arizona; Wallace S. Bransford, as County Treasurer and Ex-Officio Tax Collector of Pima County, Arizona; Charles M. Taylor, as County Assessor of Pima County, Arizona; Thomas Collins, R. H. Martin, and J. B. Mead, as Members of and Constitut-

ing the Board of Supervisors and County Board of Equalization of Pima County, Arizona, do hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit from that certain judgment rendered in the above entitled Court and cause on the 8th day of October, 1941.

Dated the 22d day of December, 1941.

RICHARD F. HARLESS
County Attorney of Maricopa County, Arizona
Court House, Phoenix, Arizona

LESLIE C. HARDY
Deputy County Attorney, Maricopa County, Arizona
Court House, Phoenix, Arizona

Attorneys for Maricopa County, Arizona; W. H. Linville, as County Treasurer and Ex-Officio Tax Collector of Maricopa County, Arizona; J. D. Brush, as County Assessor of Maricopa County, Arizona; Charles H. Fields, John A. Foote and George Frye, as Members of and constituting the Board of Supervisors and County Board of Equalization of Maricopa County, Arizona. [281]

J. MERCER JOHNSON
County Attorney, Pima County, Arizona
Court House, Tucson, Arizona

CONNER & JONES

By GERALD JONES

Special Attorneys for Pima County, Arizona

303-6 Valley National Building

Tucson, Arizona

Attorneys for Pima County, Arizona; Wallace S. Bransford, as County Treasurer and Ex-Officio Tax Collector of Pima County, Arizona; Charles M. Taylor, as County Assessor of Pima County, Arizona; Thomas Collins, R. H. Martin, and J. B. Mead, as Members of and Constituting the Board of Supervisors and County Board of Equalization of Pima County, Arizona.

[Endorsed]: Received copy this 22d day of December, 1941. Gust, Rosenfeld, Divelbess, Robinette & Coolidge, Attorneys for Plaintiff.

[Endorsed]: Filed Dec. 22, 1941. Edward W. Scruggs, Clerk, United States District Court for the District of Arizona. By: Gwen J. Ballard, Deputy Clerk. [282]

[Title of District Court and Cause—E-350.]

NOTICE OF APPEAL

Notice Is Hereby Given:

That Maricopa County, Arizona; W. H. Linville, as County Treasurer and Ex-Officio Tax Collector of Maricopa [283] County, Arizona; J. D. Brush, as County Assessor of Maricopa County, Arizona; Charles H. Fields, John A. Foote and George Frye,

as Members of and constituting the Board of Supervisors and County Board of Equalization of Maricopa County, Arizona; Pima County, Arizona; Wallace S. Brainsford, as County Treasurer and Ex-Officio Tax Collector of Pima County, Arizona; Charles M. Taylor, as County Assessor of Pima County, Arizona; Thomas Collins, R. H. Martin, and J. B. Mead, as Members of and Constituting the Board of Supervisors and County Board of Equalization of Pima County, Arizona, do hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit from that certain judgment rendered in the above entitled Court and cause on the 8th day of October, 1941.

Dated this 22d day of December, 1941.

RICHARD F. HARLESS
County Attorney of Maricopa County, Arizona
Court House, Phoenix, Arizona

LESLIE C. HARDY
Deputy County Attorney, Maricopa County, Arizona
Court House, Phoenix, Arizona

Attorneys for Maricopa County, Arizona; W. H. Linville, as County Treasurer and Ex-Officio Tax Collector of Maricopa County, Arizona; J. D. Brush, as County Assessor of Maricopa County, Arizona; Charles H. Fields, John A. Foote and George Frye, as Members of and constituting the Board of Supervisors and County Board of Equalization of Maricopa County, Arizona. [284]

J. MERCER JOHNSON
County Attorney, Pima County, Arizona
Court House, Tucson, Arizona

CONNER & JONES
By GERALD JONES
Special Attorneys for Pima County, Arizona
303-6 Valley National Building
Tucson, Arizona

Attorneys for Pima County, Arizona; Wallace S. Bransford, as County Treasurer and Ex-Officio Tax Collector of Pima County, Arizona; Charles M. Taylor, as County Assessor of Pima County, Arizona; Thomas Collins, R. H. Martin, and J. B. Mead, as Members of and Constituting the Board of Supervisors and County Board of Equalization of Pima County, Arizona.

[Endorsed]: Received copy this 22d day of December, 1941. Gust, Rosenfeld, Divelbess, Robinette & Coolidge, Attorneys for Plaintiff.

[Endorsed]: Filed Dec. 22, 1941. Edward W. Scruggs, Clerk, United States District Court for the District of Arizona. By: Gwen J. Ballard, Deputy Clerk. [285]

[Title of District Court and Cause—E-333.]

BOND ON APPEAL

Know All Men By These Presents:

That we, Maricopa County, Arizona; W. H. Linville, as County Treasurer and Ex-Officio Tax Collector of Maricopa [286] County, Arizona; J. D. Brush, as County Assessor of Maricopa County, Arizona; Charles H. Fields, John A. Foote and George Frye, as Members of and constituting the Board of Supervisors and County Board of Equalization of Maricopa County, Arizona; Pima County, Arizona; Wallace S. Bransford, as County Treasurer and Ex-Officio Tax Collector of Pima County, Arizona; Charles M. Taylor, as County Assessor of Pima County, Arizona; Thomas Collins, R. H. Martin, and J. B. Mead, as Members of and constituting the Board of Supervisors and County Board of Equalization of Pima County, Arizona, as principals, and Fidelity and Deposit Company of Maryland, of Baltimore, Maryland, a corporation, as surety, are firmly held and bound unto The Valley National Bank, of Phoenix, plaintiff above named, in the sum of Two Hundred Fifty Dollars ($250.00) lawful money of the United States of America, to be paid to the said The Valley National Bank, of Phoenix, its successors or assigns, for which payment well and truly to be made, we bind ourselves, our successors and assigns firmly by these presents.

The condition of this obligation is such that,

Whereas, a certain judgment was rendered and entered on October 8th, 1941, in the above entitled Court and cause; and,

Whereas, the same was in favor of the above named plaintiff and against the principals on this bond, and others; and,

Whereas, the said principals have appealed to the United States Circuit Court of Appeals for the Ninth Circuit [287] from said judgment;

Now, Therefore, if the said principals above named shall prosecute their said appeals with effect and shall pay all costs which have accrued in the United States District Court for the District of Arizona and which may accrue in the United States Circuit Court of Appeals for the Ninth Circuit, then this obligation shall be void; otherwise it shall remain in full force and effect.

In Witness Whereof, said principals and surety have executed these presents on this 22d day of Dec., 1941.

MARICOPA COUNTY, ARIZONA,

By RICHARD F. HARLESS
Its Attorney

W. H. LINVILLE
County Treasurer and Ex-Officio Tax Collector of Maricopa County, Arizona

J. D. BRUSH
County Assessor of Maricopa County, Arizona
GEO. FRYE
CHAS. H. FIELDS
JOHN A. FOOTE
As Members and constituting the Board of Supervisors and County Board of Equalization of Maricopa County, Arizona

[Seal of Board of Supervisors Maricopa County]

PIMA COUNTY, ARIZONA
By J. MERCER JOHNSON
Its Attorney [288]
WALLACE S. BRANSFORD
County Treasurer and Ex-Officio Tax Collector of Pima County, Arizona
CHARLES M. TAYLOR
County Assessor of Pima County, Arizona
R. H. MARTIN
Chairman
THOMAS COLLINS
Member
J. B. MEAD
Member
Members of and Constituting the Board of Supervisors and County Board of Equalization of Pima County, Arizona

[Seal of Board of Supervisors] Principals.

FIDELITY AND DEPOSIT COMPANY OF MARYLAND
By C. A. DRUMMOND
Attorney-in-Fact

[Corporate Seal] Surety.

[Endorsed]: Received copy this 22d day of December, 1941. Gust, Rosenfeld, Divelbess, Robinette & Coolidge, Attorneys for Plaintiff.

[Endorsed]: Filed Dec. 22, 1941. Edward W. Scruggs, Clerk, United States District Court for the District of Arizona. By: Gwen J. Ballard, Deputy Clerk. [289]

[Title of District Court and Cause—E-350.]

BOND ON APPEAL

Know All Men By These Presents:

That we, Maricopa County, Arizona; W. H. Linville, as County Treasurer and Ex-Officio Tax Collector of Maricopa [290] County, Arizona; J. D. Brush, as County Assessor of Maricopa County, Arizona; Charles H. Fields, John A. Foote and George Frye, as Members of and constituting the Board of Supervisors and County Board of Equalization of Maricopa County, Arizona; Pima County, Arizona; Wallace S. Bransford, as County Treasurer and Ex-Officio Tax Collector of Pima County, Arizona; Charles M. Taylor, as County Assessor of Pima County, Arizona; Thomas Collins, R. H. Martin, and J. B. Mead, as Members of and constitut-

ing the Board of Supervisors and County Board of Equalization of Pima County, Arizona, as principals, and Fidelity and Deposit Company of Maryland of Baltimore, Maryland, a corporation, as surety, are firmly held and bound unto The Valley National Bank, of Phoenix, plaintiff above named, in the sum of Two Hundred Fifty Dollars ($250.00) lawful money of the United States of America, to be paid to the said The Valley National Bank, of Phoenix, its successors or assigns, for which payment well and truly to be made, we bind ourselves, our successors and assigns firmly by these presents.

The condition of this obligation is such that,

Whereas, a certain judgment was rendered and entered on October 8th, 1941, in the above entitled Court and cause; and,

Whereas, the same was in favor of the above named plaintiff and against the principals on this bond, and others; and,

Whereas, the said principals have appealed to the United States Circuit Court of Appeals for the Ninth Circuit [291] from said judgment;

Now, Therefore, if the said principals above named shall prosecute their said appeals with effect and shall pay all costs which have accrued in the United States District Court for the District of Arizona and which may accrue in the United States Circuit Court of Appeals for the Ninth Circuit, then this obligation shall be void; otherwise it shall remain in full force and effect.

In Witness Whereof, said principals and surety have executed these presents on this 22d day of Dec., 1941.

MARICOPA COUNTY, ARIZONA,

By RICHARD F. HARLESS
Its Attorney

W. H. LINVILLE
County Treasurer and Ex-Officio Tax Collector of Maricopa County, Arizona

J. D. BRUSH
County Assessor of Maricopa County, Arizona

GEO. FRYE
CHAS. H. FIELDS
JOHN A. FOOTE
As Members of and constituting the Board of Supervisors and County Board of Equalization of Maricopa County, Arizona

[Supervisors Seal]

PIMA COUNTY, ARIZONA

By J. MERCER JOHNSON
Its Attorney [292]

WALLACE S. BRANSFORD
County Treasurer and Ex-Officio Tax Collector of Pima County, Arizona

CHARLES M. TAYLOR
County Assessor of Pima County, Arizona

R. H. MARTIN
Chairman

THOMAS COLLINS
Member

J. B. MEAD
Member

Members of and Constituting the Board of Supervisors and County Board of Equalization of Pima County, Arizona

[Seal of Board of Supervisors] Principals.

FIDELITY AND DEPOSIT COMPANY OF MARYLAND

By C. A. DRUMMOND
Attorney-in-Fact

[Corporate Seal] Surety.

[Endorsed]: Received copy this 22d day of December, 1941. Gust, Rosenfeld, Divelbess, Robinette & Coolidge, Attorneys for Plaintiff.

[Endorsed]: Filed Dec. 22, 1941. Edward W. Scruggs, Clerk, United States District Court for the District of Arizona. By: Gwen J. Ballard, Deputy Clerk. [293]

[Title of District Court and Cause—E-333.]

STATEMENT OF POINTS BY MARICOPA COUNTY AND OFFICIALS THEREOF

upon which they rely for a reversal of the judgment: [294]

I.

There is no finding by the Court or contention by appellee that the preferred stock of the appellee held by the Reconstruction Finance Corporation was excessively valued for the year 1935. It had been purchased by the Reconstruction Finance Corporation at a price equal to its par value in February, 1935, to-wit: $1,200,000.00, and was valued for 1935 at 75% of that sum (Findings VI, XII, XXVII). The only question involved on this appeal is whether the Act of Congress of March 20th, 1936, Title 12, U. S. C. A. 51 (d) (Finding XXXIX) voided the taxes for 1935 on such preferred stock.

II.

Said Act of Congress in so far as it purports to operate retroactively to destroy the tax levied pursuant to the statutes of the State of Arizona for the year 1935 upon the preferred stock of the appellee held by the Reconstruction Finance Corporation is unconstitutional and should be ignored by the courts because the tax for that year had upon the effective date of said Act become a fixed, valid lien, then payable and to the extent of one-half thereof delinquent

by virtue of the statutes of the State of Arizona (Finding XXIX) and was protected by:

(a) The due process clause of the Fifth Amendment to the Constitution of the United States;

(b) The reservation and protection of sovereign powers of states by the Tenth Amendment to the Constitution of the United States.

RICHARD F. HARLESS
County Attorney of Maricopa County, Arizona
Court House, Phoenix, Arizona

[295]

LESLIE C. HARDY
Deputy County Attorney,
Maricopa County, Arizona
Court House, Phoenix, Arizona

Attorneys for Maricopa County, Arizona; W. H. Linville, as County Treasurer and Ex-Officio Tax Collector of Maricopa County, Arizona; J. D. Brush, as County Assessor of Maricopa County, Arizona; Charles H. Fields, John A. Foote and George Frye, as members of and constituting the Board of Supervisors and County Board of Equalization of Maricopa County, Arizona.

J. MERCER JOHNSON
County Attorney of Pima
County, Arizona
Court House, Tucson, Arizona

CONNER & JONES
By GERALD JONES
Special Attorneys for Pima
County, Arizona
303-6 Valley National Building,
Tucson, Arizona

Attorneys for Pima County, Arizona; Wallace S. Bransford, as County Treasurer and Ex-Officio Tax Collector of Pima County, Arizona; Charles M. Taylor, as County Assessor of Pima County, Arizona; Thomas Collins, R. H. Martin, and J. B. Mead, as members of and constituting the Board of Supervisors and County Board of Equalization of Pima County, Arizona.

[Endorsed]: Received copy this 22d day of December, 1941. Gust, Rosenfeld, Divelbess, Robinette & Coolidge, Attorneys for Plaintiff.

[Endorsed]: Filed Dec. 22, 1941. Edward W. Scruggs, Clerk, United States District Court for the District of Arizona. By: Gwen J. Ballard, Deputy Clerk. [296]

[Title of District Court and Cause—E-333.]

STATEMENT OF POINTS BY PIMA COUNTY AND OFFICIALS THEREOF

upon which they rely for a reversal of the judgment: [297]

I.

While the situation in Pima County is factually somewhat different from that of Maricopa County, the case of the appellee as found by the Court is in effect the same, being based on the finding that the tax levied by Pima County in 1935 to the extent of $188,501.20 (Finding XV) is in reality a tax upon the preferred stock of appellee held by the Reconstruction Finance Corporation (Finding XV and XXVII). If that preferred stock was taxable, the assessment of Pima County was greatly less than would have been the case if the preferred stock had been appraised at its reasonable value. Pima County's share of valuation, as fixed by appellee, was 26.53% for the year 1935 (Finding VII). Such percentage of the reasonable value of the preferred stock, 75% of $1,200,000.00, equals $238,770.00 as compared to said $188,501.20. Consequently, the appellee was not entitled to an injunction if such preferred stock was taxable. The only question, therefore, involved on this appeal is whether the Act of Congress of March 20th, 1936, Title 12, U. S. C. A., 51 (d) (Finding XXXIX) voided the taxes for 1935 on such preferred stock.

II.

Said Act of Congress in so far as it purports to operate retroactively to destroy the tax levied pursuant to the statutes of the State of Arizona for the year 1935 upon the preferred stock of the appellee held by the Reconstruction Finance Corporation is unconstitutional and should be ignored by the courts because the tax for that year had, upon the effective date of said Act, become a fixed, valid [298] lien, payable and to the extent of one-half thereof delinquent, by virtue of the statutes of the State of Arizona (Finding XXIX) and was protected by:

(a) The due process clause of the Fifth Amendment to the Constitution of the United States;

(b) The reservation and protection of sovereign powers of states by the Tenth Amendment to the Constitution of the United States.

RICHARD F. HARLESS
County Attorney of Maricopa County, Arizona
Court House, Phoenix, Arizona
LESLIE C. HARDY
Deputy County Attorney, Maricopa County, Arizona
Court House, Phoenix, Arizona
Attorneys for Maricopa County, Arizona; W. H. Linville, as County Treasurer and Ex-Officio Tax Collector of Maricopa County, Arizona; J. D. Brush, as County Assessor of Maricopa County, Arizona; Charles H. Fields, John A. Foote and George Frye, as members of and constituting the Board of Supervisors and County Board of Equalization of Maricopa County, Arizona.

J. MERCER JOHNSON
County Attorney of Pima
County, Arizona
Court House, Tucson, Arizona

[299]

CONNER & JONES,
By GERALD JONES
Special Attorneys for Pima
County, Arizona
303-6 Valley National Building,
Tucson, Arizona

Attorneys for Pima County, Arizona; Wallace S. Bransford, as County Treasurer and ExOfficio Tax Collector of Pima County, Arizona; Charles M. Taylor as County Assessor of Pima County, Arizona; Thomas Collins, R. H. Martin, and J. B. Mead, as members of and constituting the Board of Supervisors and County Board of Equalization of Pima County, Arizona.

[Endorsed]: Received copy this 22d day of December, 1941. Gust, Rosenfeld, Divelbess, Robinette & Coolidge, Attorneys for Plaintiff.

[Endorsed]: Filed Dec. 22, 1941. Edward W. Scruggs, Clerk, United States District Court for the District of Arizona. By: Gwen J. Ballard, Deputy Clerk. [300]

[Title of District Court and Cause—E-350.]

STATEMENT OF POINTS BY MARICOPA COUNTY AND OFFICIALS THEREOF upon which they rely for a reversal of the judgment: [301]

I.

There is no finding by the Court or contention by appellee that the preferred stock of the appellee held by the Reconstruction Finance Corporation was excessively valued for the year 1936. It had been purchased by the Reconstruction Finance Corporation at a price equal to its par value in February, 1935, to-wit: $1,200,000.00, and was valued for 1936 at 75% of that sum (Findings VI, XIV, XXVIII). The only question involved on this appeal is whether the Act of Congress of March 20th, 1936, Title 12, U. S. C. A. 51 (d) (Finding XL) voided the taxes for 1936 on such preferred stock.

II.

Said Act of Congress in so far as it purports to operate retroactively to destroy the tax levied pursuant to the statutes of the State of Arizona for the year 1936 upon the preferred stock of the appellee held by the Reconstruction Finance Corporation is unconstitutional and should be ignored by the courts because the tax for that year had upon the effective date of said Act become a fixed, valid lien by virtue of the statutes of the State of Arizona (Finding XXX) and was protected by:

(a) The due process clause of the Fifth Amendment to the Constitution of the United States;

(b) The reservation and protection of sovereign powers of states by the Tenth Amendment to the Constitution of the United States.

RICHARD F. HARLESS
County Attorney of Maricopa
County, Arizona
Court House, Phoenix, Arizona

[302]

LESLIE C. HARDY
Deputy County Attorney,
Maricopa County, Arizona
Court House, Phoenix, Arizona
Attorneys for Maricopa County, Arizona; W. H. Linville, as County Treasurer and Ex-Officio Tax Collector of Maricopa County, Arizona; J. D. Brush, as County Assessor of Maricopa County, Arizona; Charles H. Fields, John A. Foote and George Frye, as members of and constituting the Board of Supervisors and County Board of Equalization of Maricopa County, Arizona.

J. MERCER JOHNSON
County Attorney of Pima
County, Arizona
Court House, Tucson, Arizona

CONNER & JONES,

By GERALD JONES

Special Attorneys for Pima County, Arizona

303-6 Valley National Building,

Tucson, Arizona

Attorneys for Pima County, Arizona; Wallace S. Bransford, as County Treasurer and Ex-Officio Tax Collector of Pima County, Arizona; Charles M. Taylor, as County Assessor of Pima County, Arizona; Thomas Collins, R. H. Martin and J. B. Mead, as members of and constituting the Board of Supervisors and County Board of Equalization of Pima County, Arizona.

[Endorsed]: Received copy this 22d day of December, 1941. Gust, Rosenfeld, Divelbess, Robinette & Coolidge, Attorneys for Plaintiff.

[Endorsed]: Filed Dec. 22, 1941. Edward W. Scruggs, Clerk, United States District Court for the District of Arizona. By: Gwen J. Ballard, Deputy Clerk. [303]

[Title of District Court and Cause—E-350.]

STATEMENT OF POINTS BY PIMA COUNTY AND OFFICIALS THEREOF

upon which they rely for a reversal of the judgment: [304]

I.

While the situation in Pima County is factually somewhat different from that of Maricopa County, the case of the appellee as found by the Court is in effect the same, being based on the finding that the tax levied by Pima County in 1936 to the extent of $78,665.08 (Finding XVI) is in reality a tax upon the preferred stock of appellee held by the Reconstruction Finance Corporation (Finding XVI and XXVIII). The question involved on this appeal is whether the Act of Congress of March 20th, 1936, Title 12, U. S. C. A., 51 (d) (Finding XXXIX) voided the taxes for 1936 on such preferred stock.

II.

Said Act of Congress in so far as it purports to operate retroactively to destroy the tax levied pursuant to the statutes of the State of Arizona for the year 1936 upon the preferred stock of the appellee held by the Reconstruction Finance Corporation is unconstitutional and should be ignored by the courts because the tax for that year had, upon the effective date of said Act, become a fixed, valid lien by virtue of the statutes of the State of Arizona (Finding XXX) and was protected by:

(a) The due process clause of the Fifth Amendment to the Constitution of the United States;

(b) The reservation and protection of sovereign powers of states by the Tenth Amendment to the Constitution of the United States.

RICHARD F. HARLESS
County Attorney of Maricopa
County, Arizona
Court House, Phoenix, Arizona

[305]

LESLIE C. HARDY
Deputy County Attorney,
Maricopa County, Arizona
Court House, Phoenix, Arizona

Attorneys for Maricopa County, Arizona; W. H. Linville, as County Treasurer and Ex-Officio Tax Collector of Maricopa County, Arizona; J. D. Brush, as County Assessor of Maricopa County, Arizona; Charles H. Fields, John A. Foote and George Frye, as members of and constituting the Board of Supervisors and County Board of Equalization of Maricopa County, Arizona.

J. MERCER JOHNSON
County Attorney of Pima
County, Arizona
Court House, Tucson, Arizona

CONNER & JONES
By GERALD JONES
Special Attorneys for Pima County, Arizona
303-6 Valley National Building, Tucson, Arizona.
Attorneys for Pima County, Arizona; Wallace S. Bransford, as County Treasurer and Ex-Officio Tax Collector of Pima County, Arizona; Charles M. Taylor, as County Assessor of Pima County, Arizona; Thomas Collins, R. H. Martin, and J. B. Mead, as members of and constituting the Board of Supervisors and County Board of Equalization of Pima County, Arizona.

[Endorsed]: Received copy this 22d day of December, 1941. Gust, Rosenfeld, Divelbess, Robinette & Coolidge, Attorneys for Plaintiff.

[Endorsed]: Filed Dec. 22, 1941. Edward W. Scruggs, Clerk, United States District Court for the District of Arizona. By: Gwen J. Ballard, Deputy Clerk. [306]

[Title of District Court and Cause—E-333.]

DESIGNATION OF PORTIONS OF THE RECORD, PROCEEDINGS AND EVIDENCE TO BE CONTAINED IN RECORD ON APPEAL.

Come now the above named defendants and appellants and designate the following portions of the

record, proceed- [307] ings and evidence to be contained in the record on appeal:

1. Second Amended and Supplemental Bill of Complaint
2. Joint and Several Answers of Defendants to Second Amended and Supplemental Bill of Complaint
3. Findings of Fact and Conclusions of Law
4. Judgment Enjoining Collection of Taxes
5. Minute Entries as follows:

All minute entries of October 23, 1935
Minute entry of November 4, 1935, insofar as it relates to the defendant Maricopa County
Minute entry of November 4, 1935, insofar as it relates to the defendant Pima County
Minute entry of March 16, 1936
Minute entry of March 23, 1936
Minute entry of March 26, 1936
Both minute entries of June 19, 1936
Minute entries of November 4, 1936, insofar as they affect Maricopa and Pima Counties
Both minute entries of December 8, 1936
Minute entry of February 19, 1937
Minute entry of March 26, 1937
Minute entry of June 1, 1938
Minute entry of March 30, 1939
Minute entry of April 1, 1939
Minute entry of April 24, 1939
Minute entry of December 28, 1939
Minute entry of September 24, 1940
Minute entry of November 29, 1940

All minute entries of June 23, 1941
Both minute entries of June 26, 1941 [308]
Both minute entries of September 13, 1941
Minute entry of September 15, 1941
All minute entries of October 8, 1941

6. Notice of Appeal
7. Appeal Bond
8. This Designation.
9. Statement of Points by Maricopa County and appellants who are public officials thereof
10. Statement of Points by Pima County and appellants who are public officials thereof.

Dated this 22d day of December, 1941.

RICHARD F. HARLESS
County Attorney of Maricopa County, Arizona
Court House, Phoenix, Arizona

LESLIE C. HARDY
Deputy County Attorney,
Maricopa County, Arizona
Court House, Phoenix, Arizona

Attorneys for Maricopa County, Arizona; W. H. Linville, as County Treasurer and Ex-Officio Tax Collector of Maricopa County, Arizona; J. D. Brush, as County Assessor of Maricopa County, Arizona; Charles H. Fields, John A. Foote and George Frye, as members of and constituting the Board of Supervisors and County Board of Equalization of Maricopa County, Arizona

J. MERCER JOHNSON
County Attorney, Pima County, Arizona
Court House, Tucson, Arizona

CONNER & JONES

By GERALD JONES
Special Attorneys for Pima County, Arizona
303-6 Valley National Building, Tucson, Arizona. [309]

Attorneys for Pima County, Arizona; Wallace S. Bransford, as County Treasurer and Ex-Officio Tax Collector of Pima County, Arizona; Charles M. Taylor, as County Assessor of Pima County, Arizona; Thomas Collins, R. H. Martin, and J. B. Mead, as Members of and constituting the Board of Supervisors and County Board of Equalization of Pima County, Arizona.

[Endorsed]: Received copy this 22d day of December, 1941. Gust, Rosenfeld, Divelbess, Robinette & Coolidge, Attorneys for Plaintiff.

[Endorsed]: Filed Dec. 22, 1941. Edward W. Scruggs, Clerk, United States District Court for the District of Arizona. By: Gwen J. Ballard, Deputy Clerk. [310]

[Title of District Court and Cause—E-350.]

DESIGNATION OF PORTIONS OF THE RECORD, PROCEEDINGS AND EVIDENCE TO BE CONTAINED IN RECORD ON APPEAL

Come now the above named defendants and appellants and designate the following portions of the record, proceed- [311] ings and evidence to be contained in the record on appeal:

1. Amended and Supplemental Bill of Complaint;
2. Joint and Several Answers of Defendants to Amended and Supplemental Bill of Complaint;
3. Findings of Fact and Conclusions of Law;
4. Judgment Enjoining Collection of Taxes;
5. Minute Entries as follows:

All minute entries of October 31, 1936
Minute entry of December 7, 1936
Both minute entries of December 8, 1936
Minute entries of December 14, 1936, relating to Maricopa County and Pima County
Minute entry February 19, 1937
Minute entry of April 15, 1937
Minute entry of June 1, 1938
Minute entry of March 30, 1939
Minute entry of April 1, 1939
All minute entries of April 24, 1939
Minute entry of December 28, 1939
Minute entry of September 24, 1940
Minute entry of November 29, 1940

Minute entry of March 22, 1941
Minute entry of June 13, 1941
Both minute entries of June 26, 1941
All minute entries of September 13, 1941
All minute entries of October 8, 1941

6. Notice of Appeal;
7. Appeal Bond;
8. This Designation;
9. Statements of Points by Maricopa County and appellants who are public officials thereof; [312]
10. Statement of Points by Pima County and appellants who are public officials thereof.

Dated this 22d day of December, 1941.

RICHARD F. HARLESS
County Attorney of Maricopa County, Arizona.
Court House, Phoenix, Arizona

LESLIE C. HARDY
Deputy County Attorney, Maricopa County, Arizona
Court House, Phoenix, Arizona
Attorneys for Maricopa County, Arizona; W. H. Linville, as County Treasurer and Ex-Officio Tax Collector of Maricopa County, Arizona; J. D. Brush, as County Assessor of Maricopa County, Arizona; Charles H. Fields, John A. Foote and George Frye, as Members of and constituting the Board of Supervisors and County Board of Equalization of Maricopa County, Arizona

J. MERCER JOHNSON
County Attorney, Pima County, Arizona
Court House, Tucson, Arizona

CONNER & JONES
By GERALD JONES
Special Attorneys for Pima County, Arizona,
303-6 Valley National Building,
Tucson, Arizona

Attorneys for Pima County, Arizona; Wallace S. Bransford, as County Treasurer and Ex-Officio Tax Collector of Pima County, Arizona; Charles M. Taylor, as County Assessor of Pima County, Arizona; Thomas Collins, R. H. Martin, and J. B. Mead, as Members of and constituting the Board of Supervisors and County Board of Equalization of Pima County, Arizona. [313]

[Endorsed]: Received copy this 22nd day of December, 1941. Gust, Rosenfeld, Divelbess, Robinette & Coolidge, Attorneys for Plaintiff.

[Endorsed]: Filed Dec. 22, 1941. Edward W. Scruggs, Clerk, United States District Court for the District of Arizona. By Gwen J. Ballard, Deputy Clerk. [314]

CLERK'S CERTIFICATE TO TRANSCRIPT OF RECORD

United States of America,
District of Arizona—ss.

I, Edward W. Scruggs, Clerk of the United States District Court for the District of Arizona, do hereby certify that I am the custodian of the records, papers and files of the said Court, including the records, papers and files in the cases of The Valley National Bank of Phoenix, Plaintiff, versus Maricopa County, Arizona, et al, Defendants, numbered E-333 Phoenix and E-350 Phoenix, on the docket of said Court.

I further certify that the attached pages, numbered 1 to 315, inclusive, contain a full, true and correct transcript of the proceedings of said causes and all the papers filed therein, together with the endorsements of filing thereon, called for and designated in Appellants' Designations of Contents of Record on Appeal, filed in said causes and made a part of the transcript attached hereto, as the same appear from the originals of record and on file in my office as such Clerk, in the City of Phoenix, State and District aforesaid, with the exception that where certain minute entries called for in said Designations are not included in said transcript, I find no such minute entries among the records of my office.

I further certify that the Clerk's fee for preparing and certifying to this said transcript of

record amounts to the sum of $61.30 and said sum has been paid to me by counsel for the appellants.

Witness my hand and the seal of said Court this 14th day of January, 1942.

(Seal) EDWARD W. SCRUGGS,
Clerk,
By WM. H. LOVELESS,
Chief Deputy Clerk. [315]

[Endorsed]: No. 10025. United States Circuit Court of Appeals for the Ninth Circuit. Maricopa County, Arizona, W. H. Linville, as County Treasurer and Ex-Officio Tax Collector of Maricopa County, Arizona; J. D. Brush, as County Assessor of Maricopa County, Arizona; Charles H. Fields, John A. Foote and George Frye, as Members of and constituting the Board of Supervisors and County Board of Equalization of Maricopa County, Arizona; Pima County, Arizona, Wallace S. Bransford, as County Treasurer and Ex-Officio Tax Collector of Pima County, Arizona, Charles M. Taylor, as County Assessor of Pima County, Arizona, Thomas Collins, R. H. Martin, and J. B. Mead, as Members of and Constituting the Board of Supervisors and County Board of Equalization of Pima County, Arizona, Appellants, vs. The Valley National Bank of Phoenix, a corporation, Appellee. Transcript of Record. Upon Appeals from the Dis-

trict Court of the United States for the District of Arizona.

Filed: January 17, 1942.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

United States Circuit Court of Appeals
for the Ninth Circuit

No. 10025

MARICOPA COUNTY, ARIZONA; W. H. LINVILLE, as County Treasurer and Ex-Officio Tax Collector of Maricopa County, Arizona; J. D. BRUSH, as County Assessor of Maricopa County, Arizona; CHARLES H. FIELDS, JOHN A. FOOTE and GEORGE FRYE, as Members of and constituting the Board of Supervisors and County Board of Equalization of Maricopa County, Arizona; PIMA COUNTY, ARIZONA; WALLACE S. BRANSFORD, as County Treasurer and Ex-Officio Tax Collector of Pima County, Arizona; CHARLES M. TAYLOR, as County Assessor of Pima County, Arizona; THOMAS COLLINS, R. H. MARTIN, and J. B. MEAD, as members of and constituting the Board of Supervisors and County Board of Equalization of Pima County, Arizona,

Appellants,

vs.

THE VALLEY NATIONAL BANK OF PHOENIX,

Appellee.

STATEMENT OF POINTS UPON WHICH APPELLANTS INTEND TO RELY ON THIS APPEAL AND DESIGNATION OF THE RECORD NECESSARY FOR THE CONSIDERATION THEREOF PURSUANT TO SUB. 6, RULE 19

Appellants herein, all of whom appeal to this Court from the judgment entered on October 8, 1941, in the United States District Court for the District of Arizona, at Phoenix in said district, in suit No. E-333, adopt as the Statements of Points on this appeal the Statements of Points filed in the United States District Court which appear at pages Nos. 294 to 300, both inclusive, of the Transcript of Record prepared and transmitted to this Court by the Clerk of said United States District Court.

Appellants designate the entire Transcript of Record prepared and transmitted to this court by the Clerk of the United States District Court as the record necessary for the consideration of this appeal, and they respectfully request the Clerk of this Court to print the whole of such record.

Dated this 14th day of January, 1942.

RICHARD F. HARLESS
County Attorney of Maricopa County, Arizona
Court House, Phoenix, Arizona

LESLIE C. HARDY,
Deputy County Attorney, Maricopa County, Arizona
Court House, Phoenix, Arizona

Attorneys for Maricopa County, Arizona; W. H. Linville, as County Treasurer and Ex-Officio Tax Collector of Maricopa County, Arizona; J. D. Brush, as County Assessor of Maricopa County, Arizona; Charles H. Fields, John A. Foote and George Frye, as members of and constituting the Board of Supervisors and County Board of Equalization of Maricopa County, Arizona.

J. MERCER JOHNSON,
County Attorney of Pima County, Arizona
Court House, Tucson, Arizona
CONNER & JONES
By GERALD JONES
Special Attorneys for Pima County, Arizona:
303-6 Valley National Building
Tucson, Arizona

Attorneys for Pima County, Arizona; Wallace S. Bransford, as County Treasurer and Ex-Officio Tax Collector of Pima County, Arizona; Charles M. Taylor, as County Assessor of Pima County, Arizona; Thomas Collins, R. H. Martin, and J. B. Mead, as members of and constituting the Board of Supervisors and County Board of Equalization of Pima County, Arizona.

Service of the foregoing acknowledged this 14th day of January, 1942.

GUST, ROSENFELD, DIVELBESS, ROBINETTE & COOLIDGE
Attorneys for Appellee

[Endorsed]: Filed Jan. 17, 1942.

[Title of Circuit Court of Appeals and Cause.]

STATEMENT OF POINTS UPON WHICH APPELLANTS INTEND TO RELY ON THIS APPEAL AND DESIGNATION OF THE RECORD NECESSARY FOR THE CONSIDERATION THEREOF PURSUANT TO SUB. 6, RULE 19

Appellants herein, all of whom appeal to this Court from the judgment entered on October 8, 1941, in the United States District Court for the District of Arizona, at Phoenix in said district, in suit No. E-350, adopt as the Statements of Points on this appeal the Statements of Points filed in the United States District Court which appear at pages Nos. 301 to 306, both inclusive, of the Transcript of Record prepared and transmitted to this Court by the Clerk of said United States District Court.

Appellants designate the entire Transcript of Record prepared and transmitted to this court by the Clerk of the United States District Court as the record necessary for the consideration of this

appeal, and they respectfully request the Clerk of this Court to print the whole of such record.

Dated this 14th day of January, 1942.

RICHARD F. HARLESS
County Attorney of Maricopa County, Arizona
Court House, Phoenix, Arizona

LESLIE C. HARDY
Deputy County Attorney, Maricopa County, Arizona
Court House, Phoenix, Arizona

Attorneys for Maricopa County, Arizona; W. H. Linville, as County Treasurer and Ex-Officio Tax Collector of Maricopa County, Arizona; J. D. Brush, as County Assessor of Maricopa County, Arizona; Charles H. Fields, John A. Foote and George Frye, as members of and constituting the Board of Supervisors and County Board of Equalization of Maricopa County, Arizona.

J. MERCER JOHNSON
County Attorney of Pima County, Arizona
Court House, Tucson, Arizona

CONNER & JONES
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Attorneys for Pima County, Arizona; Wallace S. Bransford, as County Treasurer and Ex-Officio Tax Collector of Pima County, Arizona; Charles M. Taylor, as County Assessor of Pima County, Arizona; Thomas Collins, R. H. Martin, and J. B. Mead, as members of and constituting the Board of Supervisors and County Board of Equalization of Pima County, Arizona.

Service of the foregoing acknowledged this 14th day of January, 1942.

GUST, ROSENFELD, DIVELBESS,
ROBINETTE & COOLIDGE
Attorneys for Appellee

[Endorsed]: Filed Jan. 17, 1942.

No. 10025

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

MARICOPA COUNTY, Arizona, W. H. LINVILLE, as County Treasurer and Ex-Officio Tax Collector of Maricopa County, Arizona; J. D. BRUSH, as County Assessor of Maricopa County, Arizona; CHARLES H. FIELDS, JOHN A. FOOTE and GEORGE FRYE, as Members of and constituting the Board of Supervisors and County Board of Equalization of Maricopa County, Arizona; PIMA COUNTY, Arizona, WALLACE S. BRANSFORD, as County Treasurer and Ex-Officio Tax Collector of Pima County, Arizona, CHARLES M. TAYLOR, as County Assessor of Pima County, Arizona, THOMAS COLLINS, R. H. MARTIN, and J. B. MEAD, as Members of and Constituting the Board of Supervisors and County Board of Equalization of Pima County, Arizona,

Appellants,

vs.

THE VALLEY NATIONAL BANK OF PHOENIX, a corporation,

Appellee.

Upon Appeals from the District Court of the United States for the District of Arizona.

PROCEEDINGS HAD IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

United States Circuit Court of Appeals
for the Ninth Circuit

Excerpt from Proceedings of Monday, May 18, 1942.

Before: Garrecht, Mathews and Haney, Circuit Judges.

[Title of Cause.]

ORDER OF SUBMISSION

Ordered appeals herein argued by Mr. Leslie C. Hardy, Deputy County Attorney, counsel for appellants, Maricopa County, et al., and by Mr. Gerald Jones, counsel for appellants, Pima County, et al., and by Mr. John L. Gust, counsel for appellee, and submitted to the court for consideration and decision, with leave to counsel for appellants to file further brief in 10 days.

United States Circuit Court of Appeals
for the Ninth Circuit

No. 10025

MARICOPA COUNTY, ARIZONA; W. H. LINVILLE, as County Treasurer, and Ex-Officio Tax Collector of Maricopa County, Arizona; J. D. BRUSH, as County Assessor of Maricopa County, Arizona; CHARLES H. FIELDS, JOHN A. FOOTE and GEORGE FRYE, as Members of and Constituting the Board of Supervisors and County Board of Equalization of Maricopa County, Arizona; PIMA COUNTY, ARIZONA; WALLACE S. BRANSFORD, as County Treasurer and Ex-Officio Tax Collector of Pima County, Arizona; CHARLES M. TAYLOR, as County Assessor of Pima County, Arizona; THOMAS COLLINS, R. H. MARTIN, and J. B. MEAD, as members of and constituting the Board of Supervisors and County Board of Equalization of Pima County, Arizona,

Appellants,

vs.

THE VALLEY NATIONAL BANK OF PHOENIX,

Appellee.

CONSOLIDATED APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA

STIPULATION

At the argument of the above entitled consolidated appeals, the court suggested that the record brought up to the Circuit Court of Appeals might present a question of jurisdiction under the Act of Congress of August 21, 1937, inasmuch as the Second Amended and Supplemental Bill of Complaint in Case No. E-333, and the Amended and Supplemental Bill of Complaint in Case No. E-350, were not filed until after the passage of the above act, and the court indicated that counsel might desire to file an additional showing with respect to this question.

In accordance with said suggestion, counsel for both parties have examined the Amended and Supplemental Bill of Complaint in Case No. E-333, which was presented to the court on the 26th day of March, 1936, and was permitted to be filed by the court by minute entry of June 19, 1936, (Trans. page 7) and motion to dismiss which was argued December 14, 1936, and denied on February 19, 1937. (Trans. pages 15 and 16). Counsel find that said Amended and Supplemental Bill of Complaint above mentioned contained all material allegations of fact and made all of the material contentions thereafter made in the Second Amended and Supplemental Bill of Complaint, upon which the case was tried.

That plaintiff's reliance upon the Act of Con-

gress of March 20, 1936, which act presents the question to be determined by this court as set forth in Paragraph XXXIX of the Second Amended and Supplemental Bill of Complaint, (Trans. pages 75-80) was contained verbatim, with the omissions hereinafter noted, in the Amended and Supplemental Bill of Complaint presented to the court on March 26, 1936, and permitted to be filed by minute entry of June 19, 1936, (Trans. page 7) and against which motion to dismiss was argued December 14, 1936, and denied February 19, 1937, (Trans. pages 15 and 16), all prior to the passage of the Act of August 21, 1937. The following words, on pages 76 and 77 of the Transcript of Record, found in Paragraph XXXIX of said Second Amended and Supplemental Bill of Complaint, were not contained in the amended complaint above mentioned, to-wit:

On page 76, Transcript:

> "That plaintiff, in said original complaint, further claimed immunity from such taxation under the exemptions granted to said property by Section 2 of Article IX of the Arizona Constitution, hereinbefore set forth, and likewise claimed that the taxes sought to be enjoined by it in said original complaint were illegal and void because of discrimination against it, made by the assessing officers, in violation of the Constitution of Arizona, and the Act of Congress permitting and limiting the taxation of shares of stock of national banks".

On page 77, Transcript:

> "That while said original complaint remained pending on plaintiff's claim of the exemption of the taxes sought to be enjoined under Section 2 of Article IX of the State Constitution, and plaintiff's claim of discriminatory assessment violating the Constitution of the State of Arizona, and plaintiff's claim of the violation of the Acts of Congress permitting and limiting the assessment of shares of stock of national banks".

As above stated, with the two exceptions above quoted, Paragraph XXXIX of the Second Amended and Supplemental Bill of Complaint is in all respects identical with Paragraph XXXIV of the Amended and Supplemental Bill of Complaint presented and filed prior to the passage of the Act of August 21, 1937.

Counsel for both parties have also examined the original complaint in Case No. E-350, filed on or about October 31, 1936, motion to dismiss which was argued December 14, 1936, and denied on February 19, 1937. (Trans. pages 15 and 16). Counsel find that said original bill of complaint above mentioned, contained all material allegations of fact, and made all of the material contentions thereafter made in the Amended and Supplemental Bill of Complaint upon which the case was tried. That said original Bill of Complaint, filed on or about October 31, 1936, expressly claimed a violation by the defendants of Act of March 20, 1936. That Paragraph

XXXIX of said original Bill of Complaint was in all respects identical with Paragraph XXXIX of the Amended and Supplemental Bill of Complaint upon which the case was tried, which was filed April 24, 1939, with the exception that there was omitted in said original complaint, the following paragraph, which is found on pages 145 and 146 of the transcript of Record, to-wit:

> "That if it be held that any of the taxes sought to be (123) enjoined herein are not levied or imposed upon plaintiff's shares of preferred stock, plaintiff alleges that the taxing officials and state Board of Equalization of the State of Arizona have intentionally imposed taxes upon its shares of common stock at a greater rate than they have imposed taxes upon the shares of stock of all other banks, state and national, in the state of Arizona, in violation of Section 1 of Article IX of the Constitution of Arizona, prohibiting discrimination in assessment of taxes upon the same class of property, and also in violation of Section 548, Title 12, U. S. Code Ann., providing that shares of stock in national banks shall not be taxed at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of the state, coming into competition with the business of national banks."

That the Second Amended and Supplemental Bill of Complaint in Case No. E-333, and the Amended and Supplemental Bill of Complaint in Case No.

E-350, filed on April 24, 1939, were filed primarily to renew plaintiff's claim for temporary injunction on account of the threat made by the defendants to sell plaintiff's shares of stock, made by the defendants primarily with the object of securing a three judge Court. However, in preparing said amended Bills of Complaint, the plaintiff did review the then existing complaints in both cases, and did make certain changes in the language in each of said complaints, but made no allegation of fact and advanced no legal contention which had not been asserted prior to the passage of the Act of Congress of August 21, 1937.

That if the court deems it necessary to pass upon any questions presented by the record in this case, the complaints in said cases filed prior to the passage of the Act of August 21, 1937, be considered, counsel for both sides hereby request that an order be entered directing such additional portions of the record as the court may deem proper to be brought up to the Circuit Court of Appeals.

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County Attorney, Phoenix, Arizona.

LESLIE C. HARDY
Deputy County Attorney, Phoenix, Ariz.

Attorneys for Appellants, Maricopa County, et al.

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RAWLINS & RAWLINS,
Phoenix, Arizona,
Attorneys for Appellee.

WILLIAM C. FITTS
Washington, D. C.
Of Counsel.

[Endorsed]: Filed May 23, 1942.

United States Circuit Court of Appeals
for the Ninth Circuit

Excerpt from Proceedings of Friday, August 7, 1942.

Before: Garrecht, Mathews and Haney, Circuit Judges.

[Title of Cause.]

ORDER DIRECTING FILING OF OPINION AND FILING AND RECORDING OF DECREE.

By direction of the Court, Ordered that the typewritten opinion this day rendered by this Court in above cause be forthwith filed by the clerk, and that a decree be filed and recorded in the minutes of this court in accordance with the opinion rendered.

[Title of Circuit Court of Appeals and Cause.]

Appeal from the District Court of the United States for the District of Arizona.

OPINION

Before Garrecht, Mathews and Haney, Circuit Judges.

Mathews, Circuit Judge:

In two suits (Nos. 333 and 350) brought by appellee, a national banking association, against Maricopa County, Arizona, Pima County, Arizona, and

the county treasurer, the county assessor and the members of the board of supervisors of each of said counties,[1] appellee obtained judgments enjoining appellants from collecting State, county, municipal and school district taxes on shares of preferred stock of appellee owned by Reconstruction Finance Corporation. Appellants seek reversal.

Suit No. 333, commenced on October 23, 1935, involved taxes for 1935 aggregating $43,598.45,[2] of which Maricopa County and its officers sought to collect $31,872.77 and Pima County and its officers sought to collect $11,725.68. Suit No. 350, commenced on October 31, 1936, involved taxes for 1936 aggregating $45,075.40,[3] of which Maricopa County and its officers sought to collect $29,927.88 and Pima County and its officers sought to collect $15,147.52. All the taxes involved were on the same shares—198,400 shares of preferred stock issued by appellee on February 11, 1935, pursuant to §301 of the Act of March 9, 1933, c. 4, 48 Stat. 5, as amended by the Act of June 15, 1933, c. 79, 48 Stat. 147, 12 U. S. C. A. §51a, and acquired by Reconstruction Finance Corporation on February 11, 1935, pursuant to §304

[1] Other counties and county officers were joined as defendants, but have not appealed. For present purposes, therefore, Maricopa County and its officers and Pima County and its officers may be regarded as the only defendants in these suits.

[2] Exclusive of taxes sought to be collected in counties other than Maricopa and Pima.

[3] Exclusive of taxes sought to be collected in counties other than Maricopa and Pima.

of said Act of March 9, 1933, as amended by §2 of the Act of March 24, 1933, c. 8, 48 Stat. 20, 12 U. S. C. A. §51d.

Until March 9, 1933, national banking associations were not empowered to issue preferred shares. They were, however, empowered to issue shares of common stock, and Congress, by §5219 of the Revised Statutes, 12 U. S. C. A. §548, had consented to the imposition of State taxes thereon, subject to the conditions prescribed in §5219. Whether such consent should be construed to embrace preferred shares issued pursuant to §301, supra, and acquired by Reconstruction Finance Corporation pursuant to §304, supra, was a debatable—and much debated—question until February 3, 1936, when the Supreme Court, in Baltimore National Bank v. State Tax Commission, 297 U. S. 209, decided that it should be so construed. Thereupon Congress, by §1 of the Act of March 20, 1936, c. 160, 49 Stat. 1185, amended §304 by adding thereto the following provision:

> "Notwithstanding any other provision of law or any privilege or consent to tax expressly or impliedly granted thereby, the shares of preferred stock of national banking associations * * * acquired before or after March 20, 1936, by Reconstruction Finance Corporation * * * shall not, so long as Reconstruction Finance Corporation shall continue to own the same, be subject to any taxation * * * by any State, county, municipality, or local taxing authority, whether imposed, levied, or assessed on, before

> or after March 20, 1936, and whether for a past, present, or future taxing period."

Applying this provision, the court below held that the shares here involved were not subject to taxation, and that, therefore, the taxes here involved were illegal and void. Appellants contend that the provision was inapplicable for the following reasons:

The taxes involved in suit No. 333 were levied and assessed before the date (March 20, 1936) on which the above quoted provision was enacted and were for a taxing period (the calendar year 1935) which commenced and ended before March 20, 1936. The taxes involved in suit No. 350 were for a taxing period (the calendar year 1936) which commenced before March 20, 1936. All the taxes involved were levied under the authority of chapter 75 (§§3056-3192) of the Revised Code of Arizona, 1928, of which §3101, as amended by §1 of chapter 106, Session Laws of Arizona, 1931, provided:

> "Every tax levied under the authority of this chapter upon real or personal property shall be a lien upon the property assessed. The lien shall attach on the first Monday in January in each year, and shall not be satisfied or removed until such taxes, penalties, charges and interest are all paid, or the property has finally vested in a purchaser under a sale for taxes. * * *"

Therefore appellants say that the 1935 taxes here involved became a lien upon the assessed property (appellee's preferred stock) on the first Monday in

January, 1935, and that the 1936 taxes here involved became a lien upon the assessed property on the first Monday in January, 1936. Thus, appellants say, the lien of all the taxes had attached before the enactment of the above quoted provision of §304.[4] That fact—assuming it to be a fact—did not, however, render the provision inapplicable; for, by its terms, the provision applies to all taxation of preferred stock of national banking associations owned by Reconstruction Finance Corporation, "whether imposed, levied, or assessed on, before or after March 20, 1936, and whether for a past, present, or future taxing period."

Appellants contend that, in so far as it applies to the taxes here involved, the provision is unconstitutional in that, by destroying the lien of and right to collect these taxes, it deprives the State of Arizona and its political subdivisions of their property without due process of law, in violation of the Fifth Amendment. Appellants further contend that the lien of and right to collect these taxes were acquired through the exercise of the State's reserved powers. Therefore they contend that, in destroying said lien and right, the provision violates the Tenth Amendment. These contentions are rejected for the following reasons:

Among the powers which the Constitution delegates to the United States is the power to create

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[4]This provision, which §1 of the Act of March 20, 1936, added to §304 of the Act of March 9, 1933, is spoken of in the briefs as the Act of March 20, 1936.

Federal instrumentalities such as national banking associations and to exempt such instrumentalities, their shares and shareholders from taxation. McCulloch v. Maryland, 4 Wheat. 316, 400-437; Osborn v. Bank of the United States, 9 Wheat. 738, 859-871; Van Allen v. Assessors, 3 Wall. 573, 581-588; Bradley v. Illinois, 4 Wall. 459; People v. Weaver, 100 U.S. 539, 543; Owensboro National Bank v. Owensboro, 173 U.S. 664, 667-669; Bank of California v. Richardson, 248 U.S. 476, 482-484; Smith v. Kansas City Title Co., 255 U.S. 180, 208-213; First National Bank v. Adams, 258 U.S. 362, 364; Federal Land Bank v. Crosland, 261 U.S. 374, 377; Des Moines National Bank v. Fairweather, 263 U.S. 103, 106; First National Bank v. Anderson, 269 U.S. 341, 347; First National Bank v. Hartford, 273 U.S. 548; Pittman v. Home Owners' Loan Corp., 308 U.S. 21, 32; Federal Land Bank v. Bismarck Lumber Co., 314 U.S. 95, 102.

No power to tax shares of stock of national banking associations is reserved to the States by the Constitution. Their power to tax such shares exists only by consent of Congress. Van Allen v. Assessors, supra; Bradley v. Illinois, supra; People v. Weaver, supra; Owensboro National Bank v. Owensboro, supra; Bank of California v. Richardson, supra; First National Bank v. Adams, supra; Des Moines National Bank v. Fairweather, supra; First National Bank v. Anderson, supra; First National Bank v. Hartford, supra. Without such consent, no such tax can be imposed, levied, assessed

or collected by or under the authority of any State.

By such consent, a privilege is conferred—the privilege of taxing shares of stock of national banking associations. For this privilege nothing is given by the States or received by the United States. It is a mere bounty, a pure gratuity, and hence can be withdrawn by Congress at any time. Reconstruction Finance Corporation v. Elder, D.C.N.D. Ga., 26 F. Supp. 772. In so far as it relates to preferred shares owned by Reconstruction Finance Corporation, the privilege was withdrawn by the enactment of the above quoted provision of § 304 on March 20, 1936. Thereby the collection of taxes on such shares, "whether imposed, levied, or assessed on, before or after March 20, 1936, and whether for a past, present, or future taxing period," is prohibited.

The prohibition is valid as to all such taxes, including those levided and assessed before March 20, 1936, for a period which ended before March 20, 1936, those levied and assessed after March 20, 1936, for a period which commenced before March 20, 1936, and those which, by State law, became a lien before March 20, 1936; for, regardless of when or for what period they were levied or assessed or when, if at all, they became a lien, there is and can be no vested right to collect such taxes. Reconstruction Finance Corporation v. Elder, supra.

Judgments affirmed.

[Endorsed]: Opinion. Filed Aug. 7, 1942. Paul P. O'Brien, Clerk.

United States Circuit Court of Appeals
For the Ninth Circuit

No. 10025

MARICOPA COUNTY, Arizona, et al., and PIMA COUNTY, Arizona, et al.,

Appellants,

vs.

VALLEY NATIONAL BANK OF PHOENIX,

Appellee.

DECREE

Appeal from the District Court of the United States for the District of Arizona.

This Cause came on to be heard on the Transcript of the Record from the District Court of the United States for the District of Arizona, and was duly submitted:

On Consideration Whereof, it is now here ordered, adjudged, and decreed by this Court, that the judgments of the said District Court in this cause be, and hereby are affirmed with costs in favor of the appellee and against the appellants.

It Is Further Ordered, Adjudged, and Decreed by this Court, that the appellee recover against the appellants for its costs herein expended, and have execution therefor.

[Endorsed]: Filed and entered Aug. 7, 1942.

United States Circuit Court of Appeals
for the Ninth Circuit

MARICOPA COUNTY, ARIZONA, et al.,
Appellants,

vs.

THE VALLEY NATIONAL BANK OF PHOENIX,
Appellee.

ORDER STAYING ISSUANCE OF MANDATE

Upon application of Messrs. Richard F. Harless, County Attorney, of Maricopa County, and J. Mercer Johnson, County Attorney, of Pima County, counsel for the appellants, and good cause therefor appearing, It Is Ordered that the issuance, under Rule 28, of the mandate of this Court in the above cause be, and hereby is stayed to and including October 15, 1942; and in the event the petition for a writ of certiorari to be made by the appellants herein be docketed in the Clerk's office of the Supreme Court of the United States on or before said date, then the mandate of this Court is to be stayed until after the said Supreme Court passes upon the said petition.

Dated: San Francisco, California, September 3, 1942.

CLIFTON MATHEWS,
United States Circuit Judge.

[Endorsed]: Filed Sep. 3, 1942. Paul P. O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

CERTIFICATE OF CLERK, U. S. CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT, TO RECORD CERTIFIED UNDER RULE 38 OF THE REVISED RULES OF THE SUPREME COURT OF THE UNITED STATES.

I, Paul P. O'Brien, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing three hundred eighty-nine (389) pages, numbered from and including 1 to and including 389, to be a full, true and correct copy of the entire record of the above-entitled case in the said Circuit Court of Appeals, made pursuant to request of counsel for the appellants, and certified under Rule 38 of the Revised Rules of the Supreme Court of the United States, as the originals thereof remain on file and appear of record in my office.

Attest my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 10th day of September, 1942.

[Seal] PAUL P. O'BRIEN,
Clerk.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—November 16, 1942

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit is granted. Counsel are asked to discuss in their briefs and on the oral argument the question whether petitioners, who are counties, are within the constitutional protection which they assert.

In view of the Act of August 24, 1937, 28 U. S. C. section 401, the Court hereby certifies to the Attorney General of the United States that the constitutionality of the Act of March 20, 1936, as applied, is drawn in question in this case.

It is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.